

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

_____)
JAMES, ET AL.,)
)
Plaintiffs,)
) Case No. 2:19-cv-00341-HCN-DBP
vs.)
)
DAVIES, ET AL.,)
)
Defendants.)
_____)

**EVIDENTIARY HEARING VIA ZOOM BEFORE THE HONORABLE
JUDGE HOWARD C. NIELSON, JR.**

Wednesday, November 18, 2020

Time: 1:07 p.m. to 6:42 p.m.

Reported by Teena Green, RPR, CRR, CBC

United States Courthouse
351 South West Temple, 7.430
Salt Lake City, Utah 84101
(801) 910-4092
teena_green@utd.uscourts.gov

APPEARANCES

FOR THE PLAINTIFF:

ROBERT B. SYKES, ESQ.
CHRISTOPHER PETER SORENSEN, ESQ.
SYKES MCALLISTER LAW OFFICES
311 State Street, Suite 240
Salt Lake City, Utah 84111-2320
(801) 533-0222
bob@sykesmcallisterlaw.com

FOR THE DEFENDANT:

HEATHER S. WHITE, ESQ.
DANICA N. CEPERNICH, ESQ.
SNOW CHRISTENSEN & MARTINEAU
10 Exchange Place, 11th Floor
PO Box 45000
Salt Lake City, Utah 84145-5000
(801) 521-9000
hsw@scmlaw.com

FOR OFFICER CASEY DAVIES:

JEFFREY CHRISTIAN JENSEN, ESQ.
NELSON JONES PLLC
8941 South 700 East, Suite 203
Sandy, Utah 84070
(801) 981-8779

FOR NATALIE BRUCE:

MICHAEL W. YOUNG, ESQ.
PARSONS BEHLE & LATIMER
201 South Main Street, Suite 1800
PO Box 45898
Salt Lake City, Utah 84145-0898
(801) 532-1234
myoung@parsonsbehle.com

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1 August 25, 2020

1:07 p.m.

2 P R O C E E D I N G S`

3 **THE COURT:** Good afternoon. We're here today for an
4 evidentiary hearing in the matter of *Aaron James, et al.*,
5 *versus Casey Davies, et al.*, and that's Case No. 2:19-cv-341.

6 Let's begin by having appearances of counsel for the
7 record. I know you've discussed that already with the
8 courtroom deputy, but we're on the record now.

9 We'll start with plaintiffs.

10 **MR. SYKES:** Robert Sykes and Peter Sorensen, let me
11 show him over here, for the plaintiff.

12 **THE COURT:** All right. Welcome, Mr. Sykes and
13 Mr. Sorensen.

14 How about for the defendants?

15 **MS. WHITE:** Heather White and Dani Cepernich on
16 behalf of the defendants.

17 **THE COURT:** All right. Welcome. Thank you.

18 I understand that we have a lawyer here making a
19 limited or special appearance for Officer Davies as well?

20 **MR. JENSEN:** That is correct, Your Honor.

21 **MS. WHITE:** Can you hear Mr. Jensen? Let me have him
22 come over here.

23 **MR. JENSEN:** J.C. Jensen on behalf of Casey Davies,
24 Your Honor.

25 **THE COURT:** All right. Welcome, Mr. Jensen.

1 And do we have the attorney for Ms. Bruce on the line
2 yet?

3 **MR. YOUNG:** Yes, Your Honor, Michael Young here.
4 Tali Bruce is with me in our conference room, making my limited
5 appearance.

6 **THE COURT:** All right. Thank you. And that was
7 Mr. Young; correct?

8 **MR. YOUNG:** Correct.

9 **THE COURT:** All right. Welcome. Thank you. I can
10 see you as well.

11 All right. Very well. Are there any other attorneys
12 who need to make an appearance?

13 Hearing none.

14 All right. We need to be quite careful today, given
15 the fact that we're doing this by Zoom. As an evidentiary
16 hearing, we want to have a clear and accurate transcript, so
17 please try to speak slowly. And if appropriate, please state
18 your name and role when you begin speaking, unless I've
19 specifically asked you to speak or unless the context makes
20 clear who you are.

21 And, again, except for objections and things, please
22 try not to speak over each other or interrupt and please speak
23 only when directed to.

24 Finally, put your microphone on mute when you're not
25 speaking or actively involved to reduce background noise.

1 Now, just some logistical things at the outset.

2 What I envision is that this is going to be a little
3 different from a usual hearing because we're not going to do
4 direct examination for most of the witnesses, I'm going to rely
5 on the declarations instead. And I have read the declarations,
6 all of them, and I've reread the ones of the witnesses who are
7 appearing here today. I've also read Ms. White's objections to
8 the declaration of Ms. James and I will take those under
9 consideration.

10 I think we'll start with plaintiffs and I will let
11 the plaintiffs, number one, question Ms. Bruce. And then also,
12 cross-examine any of the defendants' witnesses that they would
13 like to, who are here.

14 With regard to Ms. Bruce, I think, Mr. Sykes, I'm
15 going to start out treating her as if she were your witness and
16 as if this were a direct examination. So the usual rules
17 governing leading questions and so forth will apply.

18 **MR. SYKES:** Understood.

19 **THE COURT:** Right. If things develop in a way that
20 makes it seem that I should not treat her as a friendly witness
21 to you, then I will let you take a more adversarial approach,
22 more like a cross-examination.

23 Then, also, with Ms. Bruce, Ms. White, you or your
24 colleague can cross-examine Ms. Bruce after Mr. Sykes is
25 through. Then for each of the witnesses of yours that

1 Mr. Sykes cross-examines, you can have some redirect, if you
2 would like.

3 Now, Mr. Sykes, we're in an unusual context here
4 where we've not moved past the motion to dismiss stage. And as
5 you know, you're very familiar with qualified immunity cases,
6 it seems like you're a frequent litigant in that context. The
7 doctrine is designed in part to protect defendants who are
8 entitled to assert qualified immunity from the burdens of
9 discovery. So because of that, I'm going to be quite strict
10 when you cross-examine Mr. Davies that, number one, your
11 cross-examination needs to be limited to the matters raised in
12 his deposition, as well as matters that are relevant to whether
13 or not there is a video recording.

14 So this is not -- I'm not going to allow you to get
15 into broader matters about the incident in general and the sort
16 of things that you would be entitled to discovery on if we get
17 past the motion to dismiss stage. Is that clear, what I'm
18 saying, Mr. Sykes?

19 **MR. SYKES:** Yes. I've got about three minutes of
20 direct for him.

21 **THE COURT:** Right. Well, it's actually cross,
22 technically, but yes. Right. That's fine.

23 But, again, I just want to make clear that this is
24 not -- you know, if you survive the motion to dismiss, you'll
25 have a chance to depose him and ask him about anything that's

1 potentially relevant to the case. But today, you need to stay
2 focused on matters that are relevant to the possible existence
3 of a video and other matters that he addressed in his
4 declaration.

5 **MR. SYKES:** I understand.

6 **THE COURT:** All right. After you've done that,
7 Mr. Sykes, after you've examined Ms. Bruce and cross-examined
8 any of the other witnesses that you would like, other than, you
9 know, any of the defendants' witnesses, and then after -- as I
10 said, after you've examined each witness, I'll give Ms. White
11 or her colleague a chance to either do cross or redirect,
12 depending on which witness it is.

13 Then we will turn to Ms. White and Ms. Cepernich, and
14 we will let you cross-examine Ms. James if you wish to do so,
15 and then I think that's the only witness of Mr. Sykes's that's
16 here today. Is that correct, Mr. Sykes and Ms. White?

17 **MR. SYKES:** I have questions for Christine Mikell.

18 **THE COURT:** Oh, yes. We'll treat that -- I'm going
19 to treat her as one of the city's witnesses. So you can
20 cross-examine her about her declaration at the beginning, after
21 you talk to Ms. Bruce and as you talk to the other declarants.

22 **MR. SYKES:** I have a -- a very few questions for
23 Casey Davies. I have about two or three minutes of questions
24 for Mr. -- Officer Betenson, and maybe two or three minutes for
25 Chief Russo. That's all.

1 **THE COURT:** Okay. That's very good.

2 And, Ms. White, do you anticipate -- other than the
3 redirect -- the cross of Ms. Bruce and the redirect of any of
4 the individuals Mr. Sykes just mentioned, do you anticipate
5 anything other than just cross-examining Ms. James?

6 **MS. WHITE:** No, that's it, Your Honor.

7 **THE COURT:** All right. Very good.

8 Now, in terms of objections and so forth, I think,
9 number one, let's follow the usual rules that -- you know, one
10 attorney per side per witness. So, you know, if -- you know,
11 either Ms. White or Ms. Cepernich can be making objections --
12 or Mr. Cepernich [sic] can be making objections to questions
13 asked by Mr. Sykes or Mr. Sorensen, but not both.

14 And because this is a videoconference, it's a little
15 bit unwieldy, so please try to -- how do I say this? -- limit
16 your objections to things that really matter. Keeping in mind
17 here that we don't have a jury, the court is quite capable of
18 evaluating -- you know, distinguishing what's relevant from
19 what's not. And also -- so it's possible that --

20 Sometimes, in a trial, there's probably two or three
21 times as many objections as there really need to be. And
22 you're welcome to make them, I'm not telling you you can't
23 object, but please try and limit them to the most -- to things
24 that really matter, just because it's hard to keep track of, on
25 the screen, who's talking at the same time and so forth.

1 And also, raise your hand if you don't mind, while
2 you object, so I can have a visual clue, as well. We're not in
3 a courtroom, so standing up won't have the same effect as it
4 would in court.

5 All right. Before we proceed, are there any
6 questions about any of that?

7 **MS. WHITE:** No, Your Honor.

8 **THE COURT:** All right. And now, of course, as I
9 said, we're going to limit the objections to one attorney per
10 party, but I understand for the testimony of Ms. Bruce, of
11 course, Mr. Young, you're free to object, as well as the
12 appropriate party for the -- you know, either the city or the
13 plaintiff.

14 And with respect to Officer Davies, I suppose,
15 Mr. Jensen, the same goes for you.

16 Everyone got that? All right. As I said -- and
17 then, Mr. Young, if you have an objection, raise your hand
18 first and then take -- and I think just for -- if we have
19 enough -- if we can keep the ambient noise down, I think the
20 people who might potentially be raising objections during
21 testimony should probably take their microphones off mute as
22 well as the witness and the questioning lawyer. Sometimes in
23 the heat of action, it's easy to forget that you're on mute.
24 And, you know, if you do have an objection, you might not be
25 noticed if we can't hear you.

1 So with that, Mr. Sykes, I will let you proceed, you
2 know, essentially, as if we were in court. You can call them,
3 the witnesses, one at a time and then either engage in direct
4 with Ms. Bruce or with cross with the others.

5 **MR. SYKES:** I would call Tali Bruce. Do you want to
6 have her sworn in here?

7 **THE COURT:** We will.

8 And, Michelle, can you do that?

9 **THE COURTROOM DEPUTY:** Yes.

10 Raise your right hand, please.

11 You do solemnly swear that the testimony you shall
12 give in the case now before the Court to be the truth, the
13 whole truth and nothing but the truth, so help you God?

14 **THE WITNESS:** I do.

15 **THE COURTROOM DEPUTY:** Thank you. If you will please
16 state your full name and spell it for the record.

17 **THE WITNESS:** My full name is Natalie Bruce. I go by
18 Tali Bruce.

19 Do you want me to spell "Natalie" or "Tali"?

20 **THE COURTROOM DEPUTY:** Natalie, please.

21 **THE WITNESS:** N-A-T-A-L-I-E, B-R-U-C-E, Bruce.

22 **THE COURTROOM DEPUTY:** Thank you very much.

23 **MR. SYKES:** Okay. And just for the record, you spell
24 Tali T-A-L-I? That's your nickname?

25 **THE WITNESS:** Yes.

1 **MR. SYKES:** Now, I've got Michelle front and center
2 on my screen. I'm not seeing the witness at all. Is there
3 something we can do about that?

4 **THE COURT:** Usually there's a setting where you can
5 adjust so that you have everyone's picture on the --

6 **MR. SYKES:** I've got speaker view.

7 **MR. YOUNG:** Bob, I think she'll pop up once we start
8 speaking.

9 **MR. SYKES:** That's good. That's good. I've got it
10 now. Thanks.

11 **NATALIE B. BRUCE,**
12 called as a witness for and on behalf of the plaintiffs, being
13 first duly sworn, was examined and testified as follows:

14 **DIRECT EXAMINATION**

15 **BY MR. SYKES:**

16 **Q.** Ms. Bruce, just by way of background for the Court, where
17 did you grow up, how long have you been in Utah, how old are
18 you, that sort of thing?

19 **A.** I was born and raised in Utah. I grew up in Sandy. I'm
20 52 years old.

21 **Q.** Okay. I would have thought 32 but --

22 **A.** Thank you, Bob.

23 **Q.** Was your maiden name Curtis?

24 **A.** Curtis.

25 **Q.** Greg Curtis is your brother; right?

1 **A.** He is.

2 **Q.** Where were you educated and how far did you go in
3 education?

4 **A.** I attended Brighton High School, graduated from Alta High
5 School, and graduated from Brigham Young University with a
6 business management degree.

7 **Q.** Okay. What year did you graduate from BYU?

8 **A.** 1991.

9 **Q.** And you couldn't get into the U so you went there? Second
10 choice?

11 **A.** I started at the U, Bob, I started at the U. I graduated
12 from the Y.

13 **Q.** Tell us about your experience in business, if you would.

14 **A.** I currently own seven sports pubs called Bout Time Pub &
15 Grub and one Italian --

16 **Q.** Bout Time?

17 **A.** Bout Time.

18 **Q.** Are they all the same name, Bout Time?

19 **A.** Yeah. They're all doing business as Bout Time Pub & Grub.

20 **Q.** Where are they located generally?

21 **A.** Mostly in the Salt Lake Valley, one in Ogden, one in
22 Kimball Junction.

23 **Q.** And to whom are you married?

24 **A.** I'm married.

25 **Q.** What?

1 **A.** I'm married.

2 **Q.** And to whom?

3 **A.** Oh. William Bruce is my spouse.

4 **Q.** Tell us briefly about your city council service, when you
5 got elected and when you served.

6 **MS. WHITE:** Your Honor, I've not objected and given
7 quite a bit of leeway, but as Your Honor mentioned at the
8 outset, we really are focused in on the video recording, and it
9 seems like we're just getting far afield of that.

10 **THE COURT:** All right. Well, Ms. White, I'm going to
11 give -- this seems like kind of harmless introductory material
12 and I'll let Mr. Sykes go on with it for a little bit more, but
13 we do need to eventually get to the video.

14 **MR. SYKES:** We will. And I would just say, Judge,
15 her city council service -- the defendant raised the objection
16 that comments made about the video were outside the scope of
17 her service as a city council person, and I'm laying the
18 foundation to show that they were not.

19 **THE COURT:** All right.

20 **MR. SYKES:** It's highly relevant.

21 **THE COURT:** Okay. You can proceed, Mr. Sykes.

22 **BY MR. SYKES:**

23 **Q.** Go ahead, Ms. Bruce. Tell us about your city council
24 service, when you were elected and what you've done in the city
25 council, just very quickly.

1 **A.** I was sworn into office January of 2018.

2 **Q.** Okay.

3 **A.** I represent District 3 in the city.

4 **Q.** District 3? Which generally is where?

5 **A.** East of Highland Drive, kind of between I-215 and Bengal
6 Boulevard.

7 **Q.** Okay. And is it a four-year term?

8 **A.** It's a four-year term.

9 **Q.** You ran for office in 2017, were elected in November of
10 2017?

11 **A.** Yes.

12 **Q.** And your term expires in November of 2021; right?

13 **A.** January 1, 2022.

14 **Q.** '22, okay.

15 And in the course of your experience in the city council,
16 did you take an interest in police reform?

17 **A.** Yes.

18 **Q.** Okay. Did you take an interest in government
19 inefficiency?

20 **A.** Yes. Yeah, government efficiency.

21 **Q.** Did you take an interest in reform of the Cottonwood
22 Heights Police Department as part of that process?

23 **A.** Yes.

24 **Q.** Okay. Did you make a recommendation at some point that
25 the city, Cottonwood Heights -- there are five council people;

1 right?

2 A. Four and a mayor, yes.

3 Q. Four and a mayor, okay.

4 A. People voting, yes.

5 Q. Okay. Equal voting for all five; is that right?

6 A. Correct.

7 Q. And you have a city manager?

8 A. Yes.

9 Q. Okay. So just so the Court has an understanding, that's
10 called a weak mayor form of government, isn't it?

11 A. Correct, yeah.

12 Q. The city manager does the day to day and the mayor is a
13 figurehead?

14 A. Yes.

15 Q. Okay. All right.

16 A. He's a voting member.

17 Q. Pardon me?

18 A. He's a voting member.

19 Q. Voting member, okay.

20 And did you make a recommendation at some point that the
21 city look at contracting out its police functions to the
22 Unified Police Department?

23 A. I did not make the recommendation but I did advocate that
24 we do a cost benefit analysis.

25 Q. Okay. Now, tell us briefly about your relationship with

1 Tiffany James.

2 When did you meet and what were the circumstances?

3 **A.** I met Tiffany James in the summer of 2020. She reached
4 out to me to inquire if I would be supportive of police reform
5 policies that she was advocating for.

6 **Q.** Okay. Do you remember about what month -- we'll talk
7 about June, July, August, what month?

8 **A.** June, early June, I believe.

9 **Q.** Okay. And can you tell us briefly, by way of foundation
10 here, what kind of things you were discussing at that time?

11 **A.** Yeah. She wanted to bring some legislation. She was also
12 reaching out to Senator Reibe and Councilwoman Mikell, and she
13 wanted support.

14 **Q.** For some legislation to do what, if you can remember?

15 **A.** Just modify police policy.

16 **Q.** Okay. Was it specifically -- was part of that discussion
17 you were having to modify police policy in Cottonwood Heights?

18 **A.** I believe she wanted to pursue statewide modifications.

19 **Q.** Okay. Was part of it Cottonwood Heights also?

20 **A.** Yes.

21 **Q.** Did you discuss this with her in your official capacity as
22 a Cottonwood Heights city council member?

23 **MS. WHITE:** Objection to the qualification of
24 "official capacity," calls for a legal conclusion.

25 **THE COURT:** All right. Let's see. Mr. Sykes, why

1 don't you -- you can ask her whether she -- you know, you can
2 ask her about that, just in terms of her own understanding. I
3 think at least --

4 **BY MR. SYKES:**

5 **Q.** Ms. Bruce, what was your understanding, as you were having
6 these discussions, as to what your capacity was as you were
7 having the discussions?

8 **A.** She reached out to me because I was her city councilwoman.
9 She would not have reached out to me otherwise.

10 **Q.** Was she in your district?

11 **A.** That's in my district.

12 **Q.** Okay. All right.

13 And what kind of -- just generally -- this is my last
14 question on the foundation, but generally, what kind of
15 reforms, if you can remember, were in the discussion milieu?

16 **A.** I know that she wanted to advocate for better training,
17 requirement of body cam usage, deescalation tactics, things of
18 that nature.

19 **Q.** Okay. Did you become aware at some point that she was the
20 mother of a young man that was shot by Cottonwood Heights
21 police?

22 **A.** I did, yes.

23 **Q.** Okay. When did you come to that knowledge and how?

24 **A.** I believe Anna McNamer invited her to speak at the police
25 reform rally. And she was there in the capacity of the mother

1 who was -- of the teenager that was shot.

2 Q. Would you spell Anna's last name?

3 A. M-C-N-A-M-E-R.

4 Q. Thank you.

5 Now, I'm going to ask you about three possible videos of
6 three possible incidents. I'm going to name them one, two and
7 three so we can be very clear. Okay?

8 I'm going to ask you if you've seen any of these in just a
9 minute, okay, and how you saw them. But number one would be a
10 video of a 2017 nonfatal shooting by Cottonwood Heights Police
11 Department at night under a bridge. I'll call that number one,
12 2017. Okay?

13 A. Okay.

14 Q. Have you ever seen a video of that, ever, and how?

15 A. Yes, I have, via the Internet.

16 Q. Over the Internet, okay. That's posted publicly, is it
17 not?

18 A. Yes.

19 Q. Okay. Number two would be a video on 5/29/2018, of the
20 Zane James shooting. If a video exists, I know that's
21 contested here, but that would be number two and I'll ask you
22 about that in a minute.

23 And number three would be 5/29/18, the aftermath of the
24 shooting when Officer Harris, I think it is, arrives and takes
25 a video of Zane on the ground. That would be number three.

1 Okay?

2 So are you clear about that, one, two and three?

3 A. Yes.

4 Q. Okay. Have you seen number three --

5 A. Yes.

6 Q. -- of the aftermath?

7 A. Yes.

8 Q. Where did you see that and what were the circumstances?

9 A. Oh, we were shown, I believe, June 12th in the closed
10 session at city council.

11 Q. Let me go to that June 12th meeting. You're talking about
12 the Cottonwood Heights city council met on June 12th, 2018; is
13 that correct?

14 A. Correct.

15 Q. Almost exactly two weeks after the Zane James shooting; is
16 that right?

17 A. Yes.

18 Q. Okay. And by the way, have you ever been deposed or
19 examined before like this ever?

20 A. No.

21 Q. And you're doing a good job. You just need to make sure
22 you answer everything audibly because when you shake your head
23 I can understand that, the Judge can, but the record might not.

24 So there was a closed meeting on that day, was there?

25 A. Yes.

1 **Q.** Was there an open meeting that preceded the closed
2 meeting?

3 **A.** Yes.

4 **Q.** And what was represented to you and by whom with respect
5 to why this meeting needed to be closed?

6 **A.** To the best of my recollection, it was to assess the
7 character and competency of Officer Davies.

8 **Q.** Okay. That's what you were told?

9 **A.** That is my recollection of my -- the reasoning in my head.

10 **Q.** And [inaudible] at this meeting, Ms. Bruce, did you see a
11 video of the shooting of Zane James?

12 **MR. YOUNG:** Bob, you're kind of crackling.

13 **THE WITNESS:** Your microphone is a little crackly.

14 **MR. YOUNG:** Are other people having that issue or is
15 that on our end?

16 **THE COURT:** No, I'm hearing it as well. I think
17 we're having some feedback or maybe you're not close enough to
18 your microphone.

19 **MR. SYKES:** Is that better?

20 **MR. YOUNG:** No. Bob, do you have two speakers going
21 on in that room? Because it sounds like feedback.

22 **THE COURT:** And it was very clear until after just a
23 few -- just a couple of minutes ago, so something is --

24 (Discussion held off the record.)

25 **MR. SYKES:** Tell you what. Give me half a second.

1 I'm going to switch. I've got my TV in the background and I'm
2 going to switch to [inaudible].

3 Can you hear me now?

4 **THE COURT:** Not well.

5 **MR. SYKES:** Can you hear me now? Can you hear me
6 now?

7 **MR. YOUNG:** Same issue. I don't know what you
8 changed. It barely started. The first part of the examination
9 was fine and then we started getting the feedback or the
10 crackling.

11 **MR. SYKES:** Can you hear me now?

12 **THE COURT:** Keep speaking a little bit.

13 **MR. SYKES:** Is that better now?

14 **THE COURT:** It seems to be.

15 **MR. SYKES:** Perfect. Let me try that. I'm sorry
16 about that.

17 **BY MR. SYKES:**

18 **Q.** Let me reask that question.

19 I'm talking about now video number two, a potential video
20 of the shooting of Zane James. Did you see a video like that
21 in the June 12th meeting?

22 **A.** Yes, I did.

23 **Q.** Okay. Would you describe for the Court what you saw,
24 please.

25 **A.** The video of the shooting began with an image of a

1 crumpled motorcycle on the right-hand curb of the street and it
2 quickly panned to the left, where you could see Zane James
3 hobbling on the grass. He was attempting to run away, but was
4 clearly injured and hobbling. His right arm was visible,
5 extended down the side of his body. His left arm was quite
6 folded and held up, clearly indicating an injury.

7 He -- his pants were sliding down on his hips, you could
8 see the waistband of his underwear. And his left arm went
9 back, to me it looked evident that he was going to pull up his
10 pants, which were dropping as he was attempting to flee.

11 At that point, you hear, pow-pow, pow-pow, and he went
12 down, face down into the grass. The officer approached the
13 body and in my mind, I was thinking check for a pulse, check
14 for a pulse, but he immediately began to search the pockets,
15 pulled out a gun and threw it on the grass with a flick of his
16 wrist, demonstrating there's a gun. And the video ended after
17 that.

18 **Q.** Was the video a first-person video, meaning the shooter,
19 or was it like from a car or another person standing to the
20 side?

21 **A.** I believe it was first person.

22 **Q.** Okay. So your belief is that the person -- that the video
23 camera was on the person doing the shooting? Is that what
24 you're saying?

25 **A.** I believe so.

1 **MS. WHITE:** Objection.

2 **THE COURT:** Okay. Ms. White, go ahead.

3 **MS. WHITE:** Objection, calls for speculation.

4 **THE COURT:** Right.

5 Mr. Sykes, why don't you ask just what -- why she
6 thinks that and what she saw about it, and the way it appeared
7 that made her believe that.

8 **MR. SYKES:** I'm having trouble hearing you now,
9 Judge. Would you state that again? I'm sorry. I apologize.

10 **THE COURT:** Right. Why don't you ask Ms. Bruce just
11 the basis for why she thought it was a first-person video. You
12 know, what it was about the video, you know, things of that
13 sort.

14 **BY MR. SYKES:**

15 **Q.** What's the basis of your view that it was a first-person
16 video and not [inaudible] side or something like that?

17 **A.** Right. The video was in motion. I do recall seeing a gun
18 in the bottom left peripheral of the view. And like I said,
19 the video was in motion, approaching the body.

20 **Q.** Okay. I know it's been two years. Did you hear the
21 officer that did the shooting utter any warning, like, "stop or
22 I'll shoot," anything like that?

23 **A.** He absolutely did not because I remember thinking -- at
24 the time, I held a belief from my white privileged childhood
25 that officers always say "stop or I'll shoot," and he did not

1 say anything. There was no verbal command.

2 Q. No warning of any kind?

3 A. No warning of any kind.

4 Q. Was Zane James shot in the back?

5 A. He was.

6 Q. Did he have a weapon in his hands?

7 A. He did not.

8 Q. Did you see a weapon tucked in his pants that were falling
9 down?

10 A. You could not see a weapon.

11 Q. Did he appear to be injured as he was hobbling away before
12 he got shot?

13 A. He was clearly injured.

14 Q. How close was he, approximately, in your mind to the
15 shooter?

16 A. Maybe 35 feet. It was -- he was quite close. In my mind,
17 I thought he could tackle him.

18 Q. And I think we all agree it was Zane that got shot, so
19 I'll use his name.

20 Was Zane James showing any aggression to anybody, anybody
21 at all, when this shot -- when these shots were fired?

22 A. No.

23 Q. How did you feel as a person when you saw this shooting?

24 A. I watched the video through the lens of a mother, the
25 mother of a teenage son. I felt devastated.

1 Q. I think you already said you saw video number three, the
2 aftermath that same night; right?

3 A. Yes.

4 Q. Tell us about the conversations. If you need to take a
5 minute, take a minute.

6 MS. WHITE: I can't hear anything.

7 MR. YOUNG: I can't hear anything either.

8 MR. SYKES: Just a second.

9 BY MR. SYKES:

10 Q. Can you hear me now?

11 A. Yes.

12 Q. Is it coming through clearly?

13 THE COURT: It is. Before you proceed, I'm going to
14 ask whichever user is on as Blake, RIP Zane, you're going to
15 have turn off your video. We're not going to have signs during
16 the Zoom conference. Thank you.

17 MR. SYKES: Okay. Judge, and I apologize. I've had
18 a lot of -- I've got an iPhone and a black screen in front of
19 me. I can't see the witness again, but I've had a lot of Zoom
20 depositions and hearings and never had this problem before, so
21 I do apologize for that.

22 BY MR. SYKES:

23 Q. Now, Ms. Bruce, if you could say something, I want to get
24 you back on the screen in front of me. I'm seeing "iPhone."

25 Yeah, that's good. Thank you.

1 Okay. Now, tell us if you would, did you have
2 conversations in, say, July and August of 2020 with Tiffany
3 James about the shooting you've just described? In other
4 words, video number two, the first-person shooting, did you
5 have conversations with Tiffany James over here?

6 **A.** Yes. Yes, in August.

7 **Q.** Okay. Tell us about the first conversation you remember
8 with Tiffany James where you talked about this video.

9 **MS. WHITE:** Objection, hearsay and relevance.

10 **MR. SYKES:** Judge, I'm sorry, I am not hearing you.

11 **THE COURT:** I don't know why -- I was muted there for
12 a minute. I don't know why.

13 I don't think it's hearsay if she's talking about a
14 conversation that she participated in and what she said and
15 heard, so I'm going to overrule that.

16 **MR. SYKES:** Thank you.

17 **THE COURT:** On relevance, I -- to the extent it
18 corroborates the existence of a video, it might be relevant.
19 I'll reserve ruling on that and see where we go.

20 **BY MR. SYKES:**

21 **Q.** Okay. Ms. Bruce, go ahead and answer that question. Tell
22 me about the conversations with Tiffany James about video
23 number two, the first-person shooting that you talked about a
24 minute ago.

25 **A.** On August 2nd, there was a rally held to commemorate Zane

1 James. And there was a brief exchange between she and I where
2 video was referenced. I don't recall the exact words that were
3 exchanged and it didn't register to me as profoundly
4 significant in that moment because, as of August 2nd, it was
5 beyond my comprehension that she did not have in her possession
6 the video of Zane James's shooting. But that was our first
7 exchange.

8 August 3rd, you, Bob, held a press release at the same
9 park to talk about the event of August 2nd. That day, you
10 approached me and asked if I had seen the actual shooting of
11 Zane James. Between August 2nd and August 3rd -- sorry, the
12 evening of August 2nd, I saw Aaron James in the news. And he
13 was talking about the importance of body cam usage and the fact
14 that it would have been significant for them to have had video
15 of the shooting of their son. And it was the evening of
16 August 2nd that I made the realization that they did not have a
17 copy of that video.

18 So August 3rd, you asked me to confirm if I had seen that
19 video. And I told you at the park that I could not confirm or
20 deny what I had seen in closed session, and it was now
21 registering to me that you and the family did not have that
22 video in your possession.

23 And then approximately a week later, Tiffany James brought
24 me Utah Code that explained that you're free to talk about
25 something that you witness or hear in a closed session if you

1 believe that it is tied to a crime. And so she presented me
2 with that code, I read that code very closely, and I confirmed
3 to her that I had seen the video of her son being shot.

4 Q. The only time you and I talked was on that, I think,
5 August 3rd time?

6 A. August -- August 3rd, yes.

7 Q. Very briefly, as you've described; right?

8 A. Right.

9 Q. Okay. All right.

10 Now, did you have other conversations with Tiffany just
11 briefly about the existence of video number two?

12 A. Yeah, a half dozen times, we've spoken.

13 Q. All right. Now, since that, what's developed since that
14 time, have there been any efforts by anybody to change your
15 mind about what you saw and gaslight you, so to speak, into
16 thinking you saw a different video? Has that happened?

17 A. Oh, considerable efforts in that regard, yes.

18 Q. Please give us a few chapters of that book briefly.

19 A. When I became aware that the video was not in the hands of
20 the family, I contacted the city manager that we now have, who
21 is different than the city manager at the time, and I asked him
22 to research whether there was a video shown that night.

23 Q. Now, that would be Tim Tingey?

24 A. That would be Tim Tingey, yes. Yeah.

25 Q. Just before you go on, he wasn't at the original

1 meeting --

2 A. Correct.

3 Q. -- on the 12th of June 2018; right?

4 A. Right.

5 Q. It was a different gentleman, John Park?

6 A. Right.

7 Q. So continue on. Tim Tingey.

8 A. Tim Tingey came back to me, and his story kind of evolved
9 as he was saying it. First he suggested that what I was
10 recalling was a different video, and he said it was the video
11 of the shooting of the teenager in the underpass that occurred
12 in 2017.

13 And --

14 Q. That would be video number one --

15 A. Yes.

16 Q. -- from my definition?

17 A. Yes. Correct.

18 Q. Okay. Keep going. Keep going.

19 A. And then I told him I wasn't even on council in 2017. And
20 then he evolved to say, "Well, you're recalling the after- --
21 the aftermath video?" But it was the way that that
22 conversation was delivered, it very much felt like gaslighting.

23 Subsequently, the former mayor has called into city
24 council meeting for public comment and aggressively tried to
25 gaslight me regarding having seen this video.

1 Q. Okay.

2 A. And it was --

3 Q. I'm sorry, I didn't mean to cut you off.

4 A. No, I -- no, I'm good. Sorry. Go ahead.

5 Q. Any other attempts to persuade you that you saw a
6 different video?

7 A. Yes. I mean just repeatedly, amongst staff and council,
8 it has been back to me that I'm confusing the video I saw with
9 the video of after.

10 Q. Give some examples. You said staff and council.

11 A. Oh, I don't remember exact exchanges as clearly as I do
12 the exchange with Tim Tingey and then the exchange -- or then
13 the delivery of the message from Mayor Cullimore, previous
14 Mayor Cullimore.

15 I did have a brief exchange with Christine Mikell, I
16 believe it was August 3rd at the park. She came to me and
17 said, "There is a video; right? I'm not crazy. Right?"

18 And I said, "You're not crazy, there is a video."

19 And then she subsequently changed her story.

20 Q. But that day, you're telling the Court that Christine
21 Mikell -- by the way, it's M-I-K-E-L-L; right?

22 A. Mikell.

23 Q. She says Michael (pronouncing) not Mikell; right?

24 A. Correct.

25 Q. Mikell, okay.

1 Christine Mikell acknowledged to you that there was a
2 video, video number two, of the actual shooting; right?

3 **MS. WHITE:** Objection, Your Honor, hearsay.

4 **THE COURT:** Overruled. It's a conversation she was
5 party to, it's -- I'm not going to consider it for the truth of
6 the matter asserted, but I can consider it and will consider it
7 for the fact that the statement was made.

8 **BY MR. SYKES:**

9 **Q.** Go ahead and answer.

10 **A.** Yes. Yes. Correct.

11 **Q.** Did any other items of -- was -- were you harassed over
12 this by anybody? If you were -- in other words, harassed
13 because you told people there was a video of the actual
14 shooting.

15 Did you suffer harassment by Cottonwood Heights personnel
16 of any kind?

17 **A.** So throughout 2018, well, to present, really, I have kept
18 a journal of abuse by CHPD. And the night of June 12th, when
19 we saw the videos, our council meeting, which started I believe
20 at 6:00 p.m., we did not get out until after 1:00 in the
21 morning --

22 **Q.** Wow.

23 **A.** -- on the -- yeah, on the 13th.

24 As I left the building that night, I was harassed in the
25 parking lot by CHPD. As I went to leave --

1 Q. Now, by the way, and maybe you were going to get to this,
2 when you say you were harassed, I want you to tell the Court
3 everything about that harassment that you can remember, please.
4 It would be the morning of June 13th, early in the morning,
5 right, after midnight?

6 A. Correct.

7 Q. So tell the Court everything about that incident of
8 harassment, please.

9 A. There was some hooting and noises as I left the building
10 and entered my vehicle. And then as I went to leave the
11 parking lot, an officer truck pulled out immediately in front
12 of me. And then as we proceeded forward, another one pulled
13 out immediately behind me, and a third was shining its brights.
14 And as we left the parking lot, the two trucks sandwiched me.
15 And I thought maybe they're going somewhere, even though it's
16 after 1:00 in the morning, but they didn't turn on their lights
17 or accelerate or head away, they just sandwiched my vehicle as
18 we proceeded down 2300 East.

19 Q. By "sandwich" you mean like if you're an ice cream
20 sandwich, you're the white ice cream in the middle and they're
21 the chocolate on each side of the ice cream sandwich; right?

22 A. Correct.

23 Q. That closely?

24 A. Yes.

25 Q. And how far did that -- was that just 100 feet or was it

1 more than that?

2 **A.** It was multiple blocks.

3 **Q.** Multiple blocks. How did you feel about that?

4 **A.** I was incredibly intimidated, terrified. I began to
5 question if our city council room was bugged. Why would these
6 officers know the exact minute that I was leaving the building
7 when their department and offices are in an opposite corner of
8 the building?

9 **Q.** Okay. Any other harassment by Cottonwood Heights PD?

10 **THE COURT:** Your opposing counsel isn't objecting
11 here, but this does seem like it's pretty far afield.

12 **MR. SYKES:** But it's related. I'm sorry.

13 **THE COURT:** Well, are there incidents after the
14 discussion of the video became disputed in August? That would
15 be more interesting to me if there's something like that.

16 **MR. SYKES:** Good question.

17 **BY MR. SYKES:**

18 **Q.** I'd like you to jump ahead to August 3rd, okay? After it
19 became known to the James as you have described, about the
20 existence of the shooting video, video number two.

21 Have there been incidents of harassment by Cottonwood
22 Heights PD after that time?

23 **A.** There have. I would have to refer to my notes. There's
24 been so many incidences that they blur in terms of the
25 timeline.

1 Q. Okay. Give us your best estimate of about which month and
2 what happened. Give us the top two or three or four.

3 A. I mean I've had a lot of patrol vehicles on my street when
4 it's -- my street is a horseshoe-shaped street, it doesn't lead
5 to anything. There's been an abundance of patrol vehicles on
6 our street after August. Gosh, yeah, I'm just drawing a blank
7 on dates.

8 Q. Has Chief Robby Russo done anything to intimidate you?

9 A. Yeah. So there was an occasion where I was leaving for
10 city council and an officer was parked right on my curb. And
11 as I -- so I backed out and then proceeded this direction,
12 pulled adjacent to him, window to window, and he pretended to
13 take a cellphone call and refused to look at me. It was like a
14 telltale indicator that he was just there to intimidate me as I
15 headed to city council.

16 When they had the conversation about whether Chief Russo
17 should get a \$17,000 pay increase, the back of the room was
18 lined with officers and it felt intimidating as the voice
19 speaking out that we should have a job performance evaluation.

20 But, no, I'm sorry, you asked if Chief Russo directly --
21 it was not him on the curb or at the back of the room.

22 Q. Okay. Let me ask you one final question.

23 How certain are you that on the evening of June 12th, or
24 the morning of June 13th at city council in a closed meeting,
25 how certain are you that you saw a video of the actual

1 shooting, video number two? How certain are you?

2 **A.** I'm 100 percent certain. I watched it through a very
3 critical lens. I made judgments about the video as it
4 transpired. I gauged that he was close enough that he could
5 have been tased. I gauged that he was close enough that he
6 could have been tackled. I gauged that he was wounded and not
7 moving very fast. I perceived that he was reaching to pull his
8 waistband up when his left arm moved backward. The shots rang
9 out immediately after that. I watched him fall face first into
10 the grass. I'm 100 percent certain that I saw a video that
11 night.

12 **MR. SYKES:** That's all I have, Your Honor.

13 You know, Your Honor, could I have just ten seconds
14 to consult at counsel table?

15 **THE COURT:** You may.

16 **MR. SYKES:** Okay.

17 **BY MR. SYKES:**

18 **Q.** Okay. I do have one more question for you, if I could.

19 Did Chief Russo threaten to arrest you on August 2nd or
20 August 3rd?

21 **A.** He did.

22 **Q.** Tell us the circumstances.

23 **A.** The group that was there to honor Zane James had the
24 intention to walk from the park to the home where he was shot
25 and then back to the park. We had left the park and were

1 immediately met by officers. There was a brief discussion
2 about whether or not the group could occupy the street or the
3 side -- or had to be on the sidewalk.

4 There were conflicting messages about whether the group
5 could spill into the street. The group proceeded to move
6 again. I had now fallen to the very back of the group. I saw
7 Chief Russo turn the corner and approach the group from behind.
8 And I approached his vehicle to the passenger's side window to
9 try to clarify from his perspective, could the group occupy the
10 street or did it need to be on the sidewalk?

11 He immediately met me with a very agitated response,
12 hostilely, telling me, "Get on the sidewalk or I will arrest
13 you." He threw his car into park and jumped out and charged me
14 to the sidewalk.

15 Dan Bartlett had to somewhat physically turn him away from
16 me with his arm around his shoulder. I had no idea what was
17 about to transpire. And --

18 **Q.** We have a video -- we have a video of that and you're on
19 the sidewalk, are you not?

20 **A.** I am, yes.

21 **MR. SYKES:** No further questions.

22 **BY MR. SYKES**

23 **Q.** Sorry, I didn't mean to cut you off. Go ahead.

24 **A.** I was live streaming the whole time, so there is video
25 that I took of the entire incident.

1 **MR. SYKES:** Okay. No further questions, Your Honor.

2 **THE COURT:** All right. Thank you, Mr. Sykes.

3 Before I turn the time over to Ms. White, again,
4 we're in a virtual courtroom here and I don't allow, in any
5 case, signs or things of that nature. So, again, I'm going to
6 ask -- we have a participant in the call, Mr. Braden Stevenson,
7 you have a picture of -- yeah. Let's take that -- you have a
8 picture of Zane James showing on the -- on your video. Please
9 take that down. Thank you. It looks like you've done that.
10 No, it's back.

11 Yeah, and again, that's not intended to state a view
12 of the matter. It's just in my courtroom, either in the actual
13 courtroom or virtually, we just don't allow things in the
14 nature of physical displays of support for one party or the
15 other.

16 All right. Now, Ms. White, you can proceed with the
17 cross-examination of Ms. Bruce.

18 **MS. WHITE:** Thank you, Your Honor.

19 **CROSS-EXAMINATION**

20 **BY MS. WHITE:**

21 **Q.** Ms. Bruce, what did you do to -- what did you review in
22 preparation for your testimony here today?

23 **A.** I scrolled back through my calendar and reread some of the
24 notes from my Cottonwood Heights journal of abuse.

25 **Q.** Did you review your September 17, 2020, declaration?

1 **A.** I did not.

2 **Q.** Did you meet with anyone from the James family or anyone
3 from their attorney's office?

4 **A.** Sorry. Ask me the one about the declaration again.

5 **Q.** Did you review your declaration?

6 **A.** I apologize, yes, I did. Yeah.

7 **Q.** And did you meet with anyone from the James family or
8 anyone from their attorney's office?

9 **A.** In preparation for today?

10 **Q.** Yes.

11 **A.** No, just my attorney, Michael Young.

12 **MS. WHITE:** Your Honor, I just want to clarify that
13 we do not need to lay any foundation or move for the admission
14 of any of the declarations as we proceed today?

15 **THE COURT:** That's correct.

16 **BY MS. WHITE:**

17 **Q.** Ms. Bruce, let's have you turn to your September 17th
18 declaration. We're going to show that to you.

19 **A.** Okay.

20 **Q.** Now, you've reviewed that in preparation for today.

21 In that declaration, you did not say anything in it about
22 seeing a recording of the James shooting, did you?

23 **A.** I did not.

24 **Q.** In fact, today is the first time you've given a statement
25 under oath about seeing a recording of the shooting?

1 **A.** Under oath, yes.

2 **Q.** Okay. And why didn't you include that information in your
3 declaration of September 17, 2020?

4 **A.** I believed I would get the opportunity to tell it in
5 person.

6 **Q.** And it wasn't important enough for you to include it in
7 that declaration with the Court; correct?

8 **A.** I wouldn't say that.

9 **Q.** Now, you testified that you saw a recording of Zane
10 James's shooting on June 12th in a closed session. June 12th,
11 was that of 2018?

12 **A.** 2018.

13 **Q.** Okay. And who was there with you in that closed session?

14 **A.** The entire council, Chief Robby Russo, Dan Bartlett, Shane
15 Topham, Paula Melgar, Bryce Haderlie, John Park and Dan
16 Metcalf.

17 **Q.** And who were the city council members in that session?

18 **A.** Myself and Christine Mikell, Mike Shelton, Mayor Peterson
19 and Scott Bracken.

20 **Q.** How long was the video that you saw that you've described
21 that has been identified to you as video two, the actual
22 shooting of Zane James?

23 **A.** Oh, I don't know the exact length but it was not very
24 long.

25 **Q.** Well, can you give us an estimate?

1 **A.** Just a few minutes.

2 **Q.** Three minutes?

3 **A.** Yeah, maybe less.

4 **Q.** Okay. And does that include the recording number three
5 that you identified in your direct testimony, the aftermath of
6 the shooting?

7 **A.** No, the aftermath video was a separate video.

8 **Q.** And how long was the aftermath video?

9 **A.** Oh, again, I'm not sure.

10 **Q.** Do you have any type of an estimate?

11 **A.** I don't.

12 **Q.** Okay. Were recordings two and three separate or were they
13 one continuous recording?

14 **A.** No, they were separate, distinctly separate videos.

15 **Q.** And was there a point at which you could tell video two
16 cut off and video three began?

17 **A.** I don't think they were even shown sequentially. I
18 believe there was conversation after each.

19 **Q.** Tell me about what format you saw the recording in.

20 **A.** They were projected on to a screen.

21 **Q.** And did anyone narrate or explain as you reviewed it?

22 **A.** Not as we reviewed it. It was -- the video was set up
23 before it was shown. I believe it was Dan Bartlett that gave
24 the explanation.

25 **Q.** And do you recall what Lieutenant Bartlett said?

1 **A.** I recall him explaining that the law affords an officer
2 the right to shoot a suspect if that officer knows assuredly
3 that that suspect has just been involved in an armed robbery
4 and is leaving the scene of such incident, such that that
5 officer knows they are carrying a weapon; that the officer may
6 shoot them to stop them from potentially putting the public in
7 harm's way.

8 **Q.** And so all the people that you have named that were
9 present during that closed city council session would have seen
10 this as well; correct?

11 **A.** Yes.

12 **Q.** Now, 18 months of city council minutes and recordings have
13 been produced to plaintiffs' counsel from the date of the
14 shooting through 2019.

15 Did you review any of those in preparation for your
16 testimony today?

17 **A.** I did, yes.

18 **Q.** And who provided those to you?

19 **A.** Paula Melgar.

20 **Q.** When did you obtain them?

21 **A.** Just about a month ago.

22 **Q.** And did anything in them refresh your recollection of what
23 was shown?

24 **A.** No, none of them talked about the specifics. There are no
25 specific meetings of a closed session when you're discussing an

1 individual.

2 Q. Okay. Now, all the other people who would have been in
3 the same meeting with you have testified that they never saw
4 such a recording.

5 Do you have any explanation for that?

6 A. I'm very familiar with the power of gaslighting.

7 Q. What -- you used that term on direct.

8 What is gaslighting?

9 A. When an individual makes you feel crazy for believing
10 something that you saw. It's quite effective when someone that
11 you admire accuses you of being crazy for knowing that you saw
12 something.

13 Q. And you claim that people have done that to you?

14 A. Attempted to, yes.

15 Q. Who are those people?

16 A. Fellow council members, city manager, former Mayor
17 Cullimore.

18 Q. Give us their names specifically, please.

19 A. Specific incidents that I recall were with Tim Tingey
20 and --

21 Q. Specific names.

22 A. Tim Tingey and Kelvyn Cullimore.

23 Q. And what did Tim say to you to gaslight you?

24 A. That I -- that I must be mistaken, that the video I'm
25 recalling is of a different shooting, that the video I'm

1 recalling is of an aftermath, not the active shooting.

2 Q. Is that everything?

3 A. Yes.

4 Q. What about Mayor Cullimore, what did he say?

5 A. Mayor Cullimore, on public comment, said that how dare I
6 have the audacity to claim something that the other council
7 members are stating is not true or doesn't exist? His
8 technique was classic gaslighting.

9 Q. And could those statements from Mr. Tingey and
10 Mr. Cullimore have occurred because the recording does not in
11 fact exist?

12 A. I can't speak to that. I know what I know.

13 Q. Did you ever discuss the recording of the actual shooting
14 that you've claimed you've seen with anyone, other than Tiffany
15 James?

16 A. Just Christine Mikell.

17 Q. And you've relayed everything of the conversations you've
18 had with her about those as well?

19 A. I believe I've already relayed that.

20 Q. Have you read the complaint in this case?

21 A. I think I have, from the complaint that the James family
22 filed.

23 Q. When did you read it?

24 A. Within the last couple of weeks.

25 Q. Did you read it any time before then?

1 **A.** Not that I recall.

2 **Q.** Now, you have talked with Tiffany James about the James'
3 version of what they think happened during the shooting;
4 correct?

5 **THE COURT:** Let me pause you just for a minute,
6 Ms. White.

7 It looks like our reporter got disconnected just a
8 moment ago and I want to make sure we get a transcript of this
9 so let's get her back on the line. So if everyone could just
10 hold tight for just a couple of minutes.

11 (Discussion off the record.)

12 **MR. SYKES:** Judge, would this be a good time to take
13 a short break, maybe ten minutes?

14 **THE COURT:** Yeah, why don't we do that.

15 I apologize, Ms. White, you're kind of in the rhythm
16 and I know it's not great to be interrupted when you're in the
17 middle of your cross-examination so I apologize for that, but
18 we will take a five-minute -- let's even take a ten-minute
19 break to 2:25. And again, with apologies to Ms. White. But we
20 need to get our reporter back on and we might as well take a
21 brief break anyway, since we otherwise have to wait.

22 So you can -- please stay on the line, but feel free
23 to mute yourself to stop your video. And then if you need to
24 take care of anything, you know, you'll have a few minutes.

25 (A recess was taken.)

1 **THE COURT:** All right. I think we will resume, if
2 everyone is back.

3 Ms. White, looking back through the transcript that
4 I'm seeing from my reporter, it looks like she dropped right
5 before you asked Ms. Bruce to describe her specific
6 interactions with Tim Tingey that you and the witness were
7 referring to as gaslighting.

8 So I'd like, if you could, just to repeat that
9 question.

10 And then, Ms. Bruce, if you could answer that again.

11 Yes, go ahead, Counsel, Mr. Young.

12 **MR. YOUNG:** Yeah, during the break, Ms. Bruce sort of
13 raised an issue with me that she had recalled that one of her
14 prior answers was incomplete and so she just wanted an
15 opportunity to clean that up for the record. We can do that
16 now or if you want to do the pending question first, Ms. White,
17 we can do that. Either way. I just wanted to raise that
18 issue.

19 **THE COURT:** All right. Thank you. I guess what I'd
20 like to do, then, is, Ms. White, why don't you ask about --
21 repeat what we'll refer to as the gaslighting questions with
22 the specific individuals. And also, why don't you ask if she
23 wants to clarify one of her answers. In fact, I'll do that
24 first before we go on.

25 Ms. Bruce, I understand that you want to clarify or

1 complete one of your previous answers.

2 What was the question that you felt that you didn't
3 completely answer?

4 **THE WITNESS:** Ms. White asked if I had discussed the
5 video with anyone -- or she asked me to name the individuals
6 that I had discussed the video with. And besides Tiffany James
7 and Councilwoman Mikell, I also called Sim Gill.

8 After I became aware that the family had not had in
9 their possession the video for the last two years, I called Sim
10 to see if he knew if the video had been lost, if he had had the
11 video in his possession. And Sim indicated that he was not
12 aware of the existence of a video.

13 So I did make that phone call. I just wanted to
14 clarify, he would be the third individual that I talked to
15 about the video.

16 **THE COURT:** All right. Thank you, Ms. Bruce.

17 Now, Ms. White, I'm going to return to you. You can
18 do this in any order that you want, but I'd like you to repeat
19 the questions that you asked about the witness's specific
20 interactions with Mr. Tingey and others that she referred to as
21 gaslighting. And then also, the question you were asking when
22 I interrupted you. But basic -- and if you want to follow up
23 on what Ms. Bruce just said about the third individual, you can
24 do that as well, but basically, it's back to you.

25 **MS. WHITE:** Thank you, Your Honor.

1 Can you hear me okay? We were having some microphone
2 difficulties on the break and I want to make sure that we've
3 resolved those.

4 **THE COURT:** I can hear you.

5 Ms. Bruce, can you hear Ms. White all right?

6 **THE WITNESS:** Yeah. Yeah.

7 **BY MS. WHITE:**

8 **Q.** Ms. Bruce, so you had defined for us what gaslighting
9 means to you. And I had asked you who had tried to gaslight
10 you, and you identified Tim Tingey and Mayor Cullimore.

11 Please explain to us what conversation you had with Tim
12 Tingey that led you to conclude that he was gaslighting you.

13 **A.** The way he phrased the questioning, "Are you sure it's not
14 this other video of this other teenager that you're recalling
15 having seen?" trying to change the narrative in my mind. I
16 felt like it was gaslighting.

17 **Q.** Did he ever threaten you?

18 **A.** No.

19 **Q.** Did he ever tell you to change your testimony?

20 **A.** No.

21 **Q.** Or your statement?

22 **A.** No.

23 **Q.** And what did Mayor Cullimore tell you?

24 **A.** He called in to public comment and used stronger
25 gaslighting techniques, very accusatory, "How dare you have the

1 audacity to say that something exists when all of these other
2 people are signing sworn statements that it does not exist?"
3 It was very classic in his technique, like trying to make me
4 feel crazy.

5 Q. When did that occur?

6 A. It was a council meeting late this summer.

7 Q. And he was no longer the mayor at that point; correct?

8 A. Correct.

9 Q. Is it possible that Mr. Tingey and Mayor Cullimore, former
10 Mayor Cullimore, would have said those things to you because
11 the video does not -- of the actual shooting does not exist?

12 MR. SYKES: Objection, speculation. I don't know how
13 she would know what Cullimore is thinking.

14 THE COURT: Okay. I'll sustain that.

15 BY MS. WHITE:

16 Q. All right. So did you ever read the complaint in this
17 case?

18 A. Yes.

19 Q. When did you first read the complaint?

20 A. I don't honestly recall.

21 Q. Well, do you have some type of an estimate that you can
22 provide to us?

23 A. No.

24 Q. Was it -- you can't tell us whether it was more than a
25 year ago?

1 **A.** It definitely was more recent than that. I don't -- I
2 don't know that there was a case a year ago.

3 **Q.** All right. So you're not even sure when this case was
4 filed?

5 **A.** No.

6 **Q.** And did you read the complaint before the August 2nd,
7 2020, protest?

8 **A.** No.

9 **Q.** So it was sometime after that that you first read it?

10 **A.** I believe so.

11 **Q.** When did you first hear that a complaint had been filed?

12 **A.** I don't recall.

13 **Q.** And what do you recall hearing about what the Jameses were
14 claiming in their complaint?

15 **A.** I remember the James family expressing that they initially
16 just very much wanted a conversation with the city, that they
17 wanted --

18 **Q.** [Inaudible] I want to back up and ask that question and
19 make sure you respond to that one.

20 My question is --

21 **MR. YOUNG:** Let's let her finish her answer first and
22 then if you've got another question, go ahead.

23 **MS. WHITE:** Well, that wasn't responding to my
24 question.

25 **THE COURT:** It's cross-examination, so I will allow

1 Ms. White to control the questioning. So please go ahead,
2 Ms. White.

3 **MS. WHITE:** Thank you, Your Honor.

4 **BY MS. WHITE:**

5 **Q.** My question was: When did you first learn about what the
6 Jameses were claiming had happened to Zane in their complaint?

7 **A.** There was a police reform rally in June and Tiffany James
8 was a speaker at that event. And that's when I heard her
9 narrative.

10 **Q.** Okay. And what do you recall that narrative being?

11 **A.** That their son had had negative interactions with the
12 police force, that they felt some of their rights had been
13 violated. Police had entered their backyard without
14 permission. Their son felt targeted and harassed and not
15 supported in his earnest efforts to be clean from drugs and
16 move forward with his life.

17 **Q.** And that was approximately, then, two years after you saw
18 the recording of the actual shooting of Zane James; correct?

19 **A.** Correct.

20 **Q.** All right. And during that time, did you ever report to
21 the James family that you had seen a copy of a recording
22 showing the actual shooting?

23 **A.** It was beyond my wildest imaginations that they did not
24 have that video.

25 **Q.** So the answer to the question is no?

1 **A.** No. I hadn't even met the James family until 2020.

2 **Q.** And had you ever mentioned it to anyone else?

3 **A.** No.

4 **Q.** Did you ever have any conversations with Aaron James about
5 a recording of the shooting of Zane James?

6 **A.** Not that I recall.

7 **Q.** When did you first meet Tiffany James?

8 **A.** When she was a speaker at the police rally.

9 **Q.** And that was in June of 2020?

10 **A.** Correct.

11 **Q.** How many times have you talked with her since then?

12 **A.** Half a dozen probably.

13 **Q.** And what have you talked about?

14 **A.** Well, she did have questions about my witnessing the
15 shooting. We've also talked about police reform in general and
16 the legislative efforts that she was pursuing. And we talked
17 about her and her husband's consideration of opening a
18 restaurant, being that that's my industry.

19 **Q.** And police reform was one of the things you talked about
20 with her?

21 **A.** Yes.

22 **Q.** And did you tell Tiffany James that you had seen a video
23 of the actual shooting of her son?

24 **A.** I did eventually tell her that, yes.

25 **Q.** When did you first tell her that?

1 **A.** After she provided me the Utah code language, that I could
2 speak about what I had seen in closed session.

3 **Q.** When did that happen?

4 **A.** Approximately a week after the August 2nd rally.

5 **Q.** Where were you when you told her that?

6 **A.** At a coffee shop.

7 **Q.** A coffee shop? Was that yes?

8 **A.** Yes. Yes.

9 **Q.** And was anyone else present with you for that discussion?

10 **A.** No.

11 **Q.** What prompted you to tell her about it?

12 **A.** I thoroughly read the code that she provided and felt it
13 was appropriate to be honest.

14 **Q.** And why didn't you tell her about it sooner?

15 **A.** I had seen it in closed session and our first brief
16 encounter about the video, I think I had mistakenly let her
17 know of the existence of the video. It was beyond my
18 comprehension that she didn't know about the video. So our
19 first exchange was confusing and brief.

20 **Q.** Are there any other members of the James family that
21 you've talked to?

22 **A.** I've met two of their children.

23 **Q.** And have you talked with them about the recording at all?

24 **A.** No.

25 **Q.** What about other city officials? You've mentioned already

1 Tim Tingey and Mayor Cullimore. Did you talk with any of those
2 other people who were in the city council meeting with you on
3 June 12th, when you saw the recording of the actual shooting?

4 A. No.

5 Q. Why not?

6 A. We don't talk about things that we've seen in closed
7 session.

8 Q. You never discussed whether there was a crime that was
9 committed, I believe you described it on your direct
10 examination?

11 A. I was unaware that this video was not in its proper
12 channels until the summer of 2020.

13 Q. All right. Well, let's talk a little bit about that.

14 I want to go to the District Attorney's Office. You are
15 aware that the District Attorney's Office had concluded the
16 shooting was justified; correct?

17 A. I believe I was aware of that.

18 Q. Okay. When did you become aware of that?

19 A. I don't recall exactly.

20 Q. Do you have some sort of estimate that you can provide us?

21 A. I would be guessing.

22 Q. Let me pull up the District Attorney's October 8th, 2018,
23 report and see if that helps refresh your recollection.

24 Do you see this letter that is on the screen for you?

25 A. Yes.

1 **Q.** Your counsel has been provided copies of these, so he may
2 have those. Do you need me to scroll through that letter or do
3 you have a copy that you can take a look at?

4 **A.** Can you scroll through?

5 **Q.** Yes.

6 Did you ever read -- well, do you recognize that document?

7 **A.** Before that -- it looks familiar. I -- I did not read it
8 back in 2018.

9 **Q.** But you have read it at some time?

10 **A.** I'm not entirely sure. I mean the letterhead looks
11 familiar.

12 **Q.** Okay. And you're not sure if you've read it or not?

13 **A.** I'm not sure.

14 **Q.** Do you need a minute to read through the letter to see if
15 that will help refresh your recollection?

16 **A.** Okay.

17 **MS. WHITE:** Mr. Young, can you provide her with a
18 copy of the letter so that she can read through it?

19 **MR. YOUNG:** I'll have to pull out the exhibits, if
20 you guys want to take a break. I mean I think she's already
21 said she doesn't really have a recollection, but we can
22 either --

23 **THE WITNESS:** I'm familiar that Sim Gill -- to the
24 best of my knowledge, there's never been a police officer in
25 the state of Utah that's been found in the wrong in shooting to

1 kill or shooting and killing.

2 **BY MS. WHITE:**

3 **Q.** Well, that's not really my question and it's really off
4 topic. So what my question to you is: I want to know if you
5 need to read through this to help refresh your recollection if
6 you've ever read it.

7 **MR. YOUNG:** Your Honor, at this point, I'd ask for a
8 little guidance here. My understanding is she would be
9 responding to questions about her declaration and the documents
10 that were provided therein. We understood generally what this
11 hearing was about. I don't -- I mean if you want us to take a
12 minute and have her read letters and then answer questions
13 about letters that she's now testified she doesn't recall
14 reading, we can, but this feels a bit outside the scope of what
15 I understood we were here to do today.

16 **THE COURT:** All right. Ms. White, please let me --
17 you may be heard, Ms. White, go ahead.

18 **MS. WHITE:** The purpose of this is to go to the
19 credibility of her testimony that she has seen the body camera
20 and her reporting or failure to report that. And it's clearly
21 relevant to her credibility of the testimony that she's given
22 today. And she went far afield of her declaration on the
23 direct examination and I am cross-examining her on that
24 statement, on that testimony that she gave here today.

25 **THE COURT:** All right. How long is this letter or

1 report?

2 **MS. WHITE:** It is, I think, about ten pages and it
3 details what the DA found.

4 **MR. YOUNG:** And again, I would just respond that I'm
5 not sure how a letter from a third party to another third party
6 is within the purview of what she was here to testify about
7 today.

8 **MS. WHITE:** Well, and I'll get to that, I'll hook
9 that up, Your Honor, if -- and that's why I provided these
10 exhibits to all counsel yesterday.

11 **THE COURT:** Ms. White, can you find the -- does she
12 have to look through the whole thing? Are there specific
13 passages that might refresh her recollection?

14 **MS. WHITE:** Well, I suppose we could that.

15 **BY MS. WHITE**

16 **Q.** Let's go to page 10. And you can see where we've
17 highlighted on there a portion where the DA says, "Officer
18 Davies was not wearing a body worn camera during the OICI" in
19 the October 2018 letter.

20 Do you recall reading that?

21 **A.** No, I do not.

22 **Q.** And he also states that there was no recording of the
23 shooting, only after. Can you see that? The next sentence.
24 It's not highlighted.

25 **A.** Okay.

1 Q. Do you see that in the report?

2 A. Okay.

3 Q. Is that yes?

4 A. I see it, yes. I see it.

5 Q. And did you ever read -- does that help refresh your
6 recollection if you've ever read the report?

7 A. Yeah, I have not read the report.

8 Q. Okay. So if you haven't read the actual report, did you
9 ever hear from anyone that the DA had concluded there was no
10 body camera or recording, other type of recording of the
11 shooting?

12 A. I had not heard that or, if I did, it didn't register --

13 MR. SYKES: Your Honor, this is Bob Sykes. I object.
14 That misstates the evidence. What he says is, "No video
15 recording of the OICI exists as far as they know at this time,"
16 is what it says. Not that they found that there was no
17 recording, they didn't know of any at the time they wrote it.
18 So it's --

19 THE COURT: All right.

20 MR. SYKES: -- misstating the evidence.

21 THE COURT: All right, Mr. Sykes. I think, though,
22 the witness has testified that she didn't read that or doesn't
23 recall reading that.

24 And so, Ms. White, I will let you ask if she had
25 heard anything about this finding.

1 **BY MS. WHITE**

2 **Q.** Would you please respond to that question, Ms. Bruce?

3 **A.** I don't recall hearing anything about there not being a
4 body cam in existence. If I did hear something along those
5 lines, it would not have registered as -- it never occurred to
6 me as a possibility, that a video that I knew I saw could
7 vanish and not be in the proper channels and the proper hands
8 moving forward in time. That was just a possibility that never
9 ever crossed my mind.

10 **Q.** That wouldn't have startled you had you heard that?

11 **A.** Only if it registered with my brain. Like I said, it was
12 out of my realm of comprehension.

13 **Q.** So are you -- is your testimony that you did learn at some
14 point that the DA concluded Officer Davies was not wearing a
15 body camera and did not locate a recording of the shooting?

16 **A.** Well, I think like Bob Sykes just indicated, they didn't
17 conclude that there was not a video. They concluded that there
18 was no video in their possession at the time of this writing.

19 **Q.** That wasn't my question. My question specifically said
20 that they had not located any type of recording.

21 **A.** Sorry. That's a statement.

22 Can you rephrase the question?

23 **Q.** Yes.

24 My question is: Did you learn at some point that the DA
25 concluded Officer Davies was not wearing a body camera and they

1 had not located a recording of the shooting?

2 **MR. SYKES:** Object to the form of the question,
3 Judge. That's a false predicate. There's no evidence in the
4 record that the DA ever concluded that. What they said was
5 there was no video recording as far as they know at this time.
6 That's what was said in the letter. So she's putting a
7 false predicate in there and asking the question.

8 **THE COURT:** All right. The first sentence does say,
9 "Officer Davies was not wearing a body worn camera during the
10 OICI."

11 So I'm going to overrule that. I don't want to
12 spend -- I'll let you get the answer to this question, but at
13 that point, Ms. White, you know, absent some evidence or
14 indication that the witness recalls ever seeing this, I don't
15 want to go much further down this path, I don't think.

16 So you can get an answer to the question you just
17 asked and then let's -- and then we'll see where you want to go
18 from there.

19 **MS. WHITE:** Thank you, Your Honor.

20 **BY MS. WHITE**

21 **Q.** My question was, Ms. Bruce, did you ever learn at some
22 point that the DA concluded Officer Davies was not wearing a
23 body camera and the DA had not located any recording of the
24 shooting?

25 **A.** Oh. What I learned was directly from my conversation with

1 Sim Gill in August of this year. After August 2nd, when I
2 became aware that the family did not know a video existed, I
3 called Sim Gill and he indicated that he also was not aware
4 that a video existed. So at that time, I learned that Sim did
5 not believe that a video existed.

6 **Q.** And that was the first time you had learned from any
7 source that that is what the DA had concluded?

8 **A.** I didn't even go to the point in the conversation that I
9 knew that there was a conclusion. I'm sorry. I didn't really
10 follow the case and know that conclusions had been drawn versus
11 open and out there. I didn't know the status.

12 **THE COURT:** Ms. White, if I may, I just -- I'll just
13 ask Ms. Bruce.

14 Have you heard anything about what she's asking now,
15 about what the DA -- anything that the DA said or found about
16 the camera or the video footage? Had you heard anything about
17 that before the hearing today?

18 **THE WITNESS:** I don't think so.

19 **THE COURT:** All right. Okay. Thank you.

20 I think -- Ms. White, I think that's the answer you
21 were looking for.

22 **MS. WHITE:** Thank you, Your Honor.

23 **BY MS. WHITE:**

24 **Q.** And so you claim that you called Mr. Gill in August of
25 2020, after August 2nd of 2020, to talk to him about the

1 recording, is that what I understand?

2 **A.** Yeah. I called him to question if his office also did not
3 have the recording as I had learned that the family had not
4 seen it.

5 **Q.** All right. And when did you contact him, do you recall?

6 **A.** Somewhere in the second week of August.

7 **Q.** Okay. Of 2020?

8 **A.** Yes.

9 **Q.** And who did you speak with?

10 **A.** Sim Gill.

11 **Q.** And was that by telephone?

12 **A.** Yes.

13 **Q.** Did he ever interview you about that recording that you
14 now claimed exists, that he had earlier found did not -- a body
15 camera video that he found did not exist?

16 **A.** We had that phone conversation. That was it.

17 **Q.** So he never followed through with you about getting a copy
18 of that recording from you?

19 **A.** I wouldn't have a copy of that recording.

20 **Q.** My question is: He never followed through with you about
21 your claim that a recording existed?

22 **A.** We had the phone conversation and that was the extent of
23 it.

24 **Q.** And he's never reopened, to your knowledge, the
25 investigation of that?

1 **A.** Not that I know of.

2 **Q.** Have you ever personally spoken with Attorney Robert Sykes
3 or anyone in his office?

4 **A.** I had that brief exchange with Bob Sykes August 3rd, at
5 the press release.

6 **Q.** And you're referring to a press conference that occurred
7 following the August 2nd, 2020, protests?

8 **A.** Correct.

9 **Q.** I want to show you a photo of you with him and the James
10 family at that and ask you some questions about that.

11 Is that you on the right-hand side?

12 **A.** Yes.

13 **Q.** And then who is sitting to your right in the photograph?

14 **A.** Aaron James.

15 **Q.** And then to his right is Mr. Sykes?

16 **A.** Correct.

17 **Q.** And then Tiffany James is on the far right?

18 **A.** Yes.

19 **Q.** Okay.

20 **MS. WHITE:** You can take that down, Jennifer.

21 **BY MS. WHITE**

22 **Q.** The press conference took place on August 3rd, the day
23 after the protest; correct?

24 **A.** Correct.

25 **Q.** And how did you learn about it?

1 **A.** I'm not sure. I think -- it might have been a phone call
2 or a text. I really don't remember.

3 **Q.** Who informed you about it?

4 **A.** I'm not entirely sure on that one either. I just remember
5 there was a lot of activity that day.

6 **Q.** Okay. And you have no idea who may have told you about
7 there being a press conference?

8 **A.** It was probably Tiffany but I'm speculating.

9 **Q.** And why did you appear?

10 **A.** I was -- the press conference was related to the
11 August 2nd event.

12 **Q.** What was your purpose of being there?

13 **A.** I wanted the truth to come out about the August 2nd event.

14 **Q.** And who invited you to sit at the table?

15 **A.** I think it was Bob.

16 **Q.** And why did you sit at the table with Mr. James,
17 Ms. James, and Mr. Sykes?

18 **A.** I wanted the truth to come out about the August 2nd event,
19 so I was willing on take questions if they were applicable to
20 me.

21 **Q.** Have you ever sent or received any e-mails from Mr. Sykes
22 or anyone in his office?

23 **A.** Not that I recall.

24 **Q.** And I want to be crystal clear about this. You swear
25 under oath today that you have never sent to or received any

1 e-mails from the Jameses' attorney, Robert Sykes?

2 **A.** I know that I intend to reach out to his office. He had
3 two paralegals that were in attendance August 2nd, and I wanted
4 to capture their statements regarding that event.

5 I can't remember if I've already e-mailed the office or if
6 it's still on my to-do list, but there's not an exchange that's
7 jumping out.

8 **Q.** So I think -- and you correct me if I'm wrong, I thought
9 you testified that you have not exchanged any e-mails with
10 Mr. Sykes or anyone in his office. Is that correct?

11 **A.** I may have and I'm just not remembering.

12 **Q.** So initially you thought you didn't, but now you think you
13 may have?

14 **A.** I still think I probably haven't. I don't recall.

15 **MS. WHITE:** Your Honor, we're receiving some
16 background noise and maybe I think it's best to wait to ask
17 questions until the person who is on is off -- is muted.

18 **THE COURT:** Yeah. Let's --

19 **MR. SYKES:** Judge, it was Eden Taylor and they
20 just muted it so I think we're okay.

21 **THE COURT:** Okay. Very good.

22 All right. You can proceed.

23 **MS. WHITE:** All right.

24 **BY MS. WHITE:**

25 **Q.** Now, if I'm not mistaken, the first time you mentioned

1 anything about seeing the recording of the shooting, the actual
2 shooting, was to Tiffany James at the August 2nd, 2020,
3 protest; is that right?

4 **A.** I believe so.

5 **Q.** All right. Now, after you were elected in November 2017
6 to your current position as a city council member, you proposed
7 looking into eliminating the city's police department and
8 contracting out for law enforcement services; correct?

9 **A.** I did not propose that action. I proposed that we do a
10 cost benefit analysis of keeping our own force versus merging
11 with UPD.

12 **Q.** Yeah, that was my question. You proposed looking into
13 that?

14 **A.** I did.

15 **Q.** Okay. And that created some contention with the police
16 department, didn't it?

17 **A.** It did.

18 **Q.** Including with the chief?

19 **A.** Yes.

20 **Q.** And then after that, you publicly posted on social media
21 that the city lost the case that cost the city \$60,000, didn't
22 you?

23 **A.** I posted that.

24 **MR. YOUNG:** Your Honor, I'm going to lodge an
25 objection as to relevance. There is another lawsuit pending

1 between Mr. Russo, the City of Cottonwood Heights and
2 Ms. Bruce. I'm having a hard time figuring out the relevance
3 of this, vis-a-vis whether there was a video or not, which is
4 what I understood Ms. Bruce was here to testify about. So
5 we're going to -- I'm going to object on the basis of
6 relevance.

7 **THE COURT:** All right. Thank you, Mr. Young.

8 Ms. White, please respond. Why is this relevant to
9 what we're discussing today?

10 **MS. WHITE:** We have numerous individuals who have
11 testified via declaration that this recording never existed and
12 they've never seen it. This goes to Ms. Bruce's motive to
13 state that she either -- that she saw a video that doesn't
14 exist. It goes to her credibility. It is admissible under
15 Rule 613 as a prior statement that she has made. And it's
16 critical to show that she has a motive to make this up when all
17 the other people and the logs of -- the camera logs themselves
18 are showing this recording never existed.

19 **THE COURT:** All right, Ms. White. How many -- I
20 understand, for want of a better word, that there's some
21 history or some bad blood here between Chief Russo and
22 Ms. Bruce. How long do you intend to spend on this? How much
23 do you have here? Because it seems like -- I understand what
24 you're saying, but it also seems like to get into too many of
25 the particulars of it might not be a very productive use of our

1 time.

2 **MS. WHITE:** I just have a few questions on the face
3 of the post. There are some other issues as well that I want
4 to go into that also establish the motive and credibility.

5 **MR. YOUNG:** And, Your Honor, we're happy to proffer
6 and stipulate that Chief Russo and Ms. Bruce are currently in a
7 lawsuit against each other. They clearly probably have no
8 great feelings towards each other. To the extent, you know,
9 that lawsuit would motivate Ms. Bruce in a way Ms. White is
10 suggesting, she can argue that.

11 The issue I have is we're now eliciting testimony
12 that's going to touch upon issues in another lawsuit that
13 really has a significant chance to prejudice Ms. Bruce in that
14 lawsuit. And so I think that, you know, the merits weigh
15 against delving into this testimony when we all know they don't
16 like each other. That's fine.

17 The fact that they don't like each other may provide
18 her a motive, that's fine, we could stipulate to that as well.
19 I just don't want to put my client in a position where she's
20 prejudiced by what is really tangential questioning to the
21 issues that we're here to talk about today.

22 **MS. WHITE:** Your Honor, this is not tangential. This
23 is critical to her motive. And the plaintiffs have claimed
24 that all of these people are engaged in a great conspiracy to
25 hide and destroy and corrupt information, and it is crucial to

1 the defenses against those assertions.

2 **MR. YOUNG:** Yeah, and I think --

3 **THE COURT:** Mr. Young, tell me specifically how these
4 lines of questioning might be problematic for your client in
5 the other lawsuit.

6 **MR. YOUNG:** Well, because you have the very claims
7 that Chief Russo has raised regarding defamation. And
8 candidly, they're a bit unclear and those claims are subject to
9 a motion to dismiss right now, but claims of defamation and
10 essentially sabotage of his position at the city. Ms. Bruce,
11 of course, has counterclaims, specifically an anti-SLAPP claim,
12 that speaks to his claims in that lawsuit as well.

13 So at this point, we're eliciting testimony that
14 would speak to motivations of both of the parties, whether it
15 be defamation under Mr. Russo's claims or the anti-SLAPP claims
16 that Ms. Bruce has raised.

17 And again, I would be sympathetic to Ms. White's
18 position if we were before a jury. I think Your Honor is fully
19 capable of understanding the context and the dynamic here
20 between the parties. And in an effort to preserve Mrs. Bruce's
21 rights in the other lawsuit, I think we should just avoid this
22 line of questioning with an understanding that they don't like
23 each other, and that's fine.

24 **THE COURT:** All right. And, Mr. Young, just to be
25 clear, are statements like this, the one that's on the screen

1 right now, potentially the statements that, in the other
2 lawsuit, Chief Russo might be saying constitutes defamation?

3 **MR. YOUNG:** I would assume so.

4 Now, if Chief Russo is willing to stipulate here
5 under oath that he is not going to use any of the statements
6 that Ms. White -- or any of the evidence that Ms. White intends
7 to put forward today, as evidence in the other lawsuit, then
8 I'm happy to let Ms. Bruce answer questions about this, but
9 when we start talking about the context of that lawsuit versus
10 the hearing today, we've got to be careful about how things can
11 sort of get spun out down the road, particularly in what I --
12 like I said, I think is sort of a tangential issue.

13 **THE COURT:** All right. Ms. White, what I'd like to
14 do is why don't you show us, without asking questions, any of
15 the statements or documents that you would like to ask
16 questions about. I see one. Why don't you just walk -- just
17 walk me through them and then I'll decide whether I'm going to
18 let you pursue this or not. I see this one here.

19 **MS. WHITE:** Well, first is this Facebook post,
20 Your Honor, which misstates facts in a way that shows that
21 Ms. Bruce was upset with Chief Russo and the police department,
22 and thought that the police department was costing the city
23 more money than the alternatives, which she has said she wanted
24 to explore.

25 It also shows on credibility that she misstates what

1 happens, which goes to her credibility here. The city did not
2 lose the case, it settled it. And her statement that it lost
3 the case was not a true statement.

4 **THE COURT:** All right. So that's that post. Do you
5 want to walk me through anything else that you --

6 **MS. WHITE:** Yes, Your Honor.

7 The other, I just wanted to confirm with her that
8 Chief Russo filed a lawsuit against her in May 2020, alleging
9 that she has harassed him in his efforts to run the Cottonwood
10 Heights Police Department, and that she deleted or redacted
11 emails he sought in a GRAMA request. In response, on
12 August 5th, 2020, she asserted a counterclaim against him,
13 alleging he harassed and intimidated her because of her efforts
14 to disband the Cottonwood Heights Police Department.

15 **THE COURT:** All right. Thank you.

16 Mr. Young --

17 **MR. YOUNG:** Yeah.

18 **THE COURT:** Would you stipulate to the fact that that
19 was Ms. Bruce's Facebook post that we just saw?

20 **MR. YOUNG:** Yeah, we're happy to stipulate to the
21 Facebook post, as well as the complaint and the counterclaims.
22 I would just request that it's made clear on the record that
23 Your Honor is not making any determinations as to the
24 characterizations that Ms. White has sort of made associated
25 with that evidence, whether it was a misstatement, untruth or

1 whatever. We're happy to stipulate that these documents exist.

2 **THE COURT:** Right. And do you think that -- leaving
3 aside the Facebook post, I certainly understand why you
4 wouldn't want to stipulate to her characterization of it. Do
5 you think that Ms. White's -- and I'm asking you, not your
6 client, so this is not binding on her. She is not answering
7 it. Do you think Ms. White accurately -- reasonably accurately
8 stated the positions of the two parties in the other case?

9 **MR. YOUNG:** Yes, I think that's fine. I mean I think
10 the documents probably speak for themselves and whoever wants
11 to -- you know, you can pull out of the documents what you want
12 in terms of what they mean. But yes, he sued for harassment,
13 she sued -- he sued for defamation and harassment, she's
14 countersued for harassment and anti-SLAPP. That's a fair
15 characterization of the lawsuit.

16 **THE COURT:** All right. I think -- Ms. White, I think
17 I understand what's going on here in terms of why there would
18 be potentially, you know, some tension and some bad blood
19 between Ms. Bruce and Mr. Russo and I think you're free to
20 argue based on that, you know, if you feel like that
21 establishes a motive for Ms. Bruce to -- you know, to
22 perhaps -- you're free to argue that that casts some kind of a
23 cloud on her testimony, but I don't -- given that -- I'm not
24 going to have her testify under oath here about things that
25 could, you know, potentially be evidence in a pending lawsuit

1 in another case.

2 **MS. WHITE:** Your Honor, I would like to move for the
3 admission of the Facebook post here.

4 **THE COURT:** Unless -- is there any objection from --
5 either from Mr. Sykes or Mr. Young to that?

6 **MR. SYKES:** I have no objections. This is Bob Sykes.
7 I have no objection to it.

8 **THE COURT:** Mr. Young, I assume you don't either
9 since you stipulated it was her post.

10 **MR. YOUNG:** Yes. And I guess -- I guess in
11 conferring with my client, I just needed to clarify one thing.
12 She mentioned that she did later correct the post on the issue
13 that it was settled, not that they lost the lawsuit.

14 **THE COURT:** Okay. All right. And if -- you know, if
15 you want to -- if you or Mr. Sykes wants to offer that post,
16 you know, I'd accept that, too.

17 All right. Anyway -- and I assume the filings in the
18 other case are public records, I assume. I could take judicial
19 notice of them, whether I admit them or not, but absent any
20 objection, I will admit those as well.

21 Mr. Sykes, Mr. Young, do either of you object to my
22 either taking judicial notice of or admitting those filings
23 that Ms. White showed in the other case?

24 **MR. SYKES:** We have no objection, Judge.

25 **MR. YOUNG:** We have no objection either. If

1 Your Honor would like, we can also provide the motion to
2 dismiss that's pending.

3 **THE COURT:** All right. Very well. Thank you.

4 All right, Ms. White, why don't you move to other
5 lines of questioning if you have them.

6 **MS. WHITE:** Thank you. I want to move to the
7 August 2nd, 2020, protest related to the shooting of Zane
8 James.

9 **BY MS. WHITE:**

10 **Q.** Did you participate in the organization of it, Ms. Bruce?

11 **A.** [No audible response.]

12 **MR. YOUNG:** Answer again.

13 **THE WITNESS:** Sorry, I did not, no.

14 **BY MS. WHITE**

15 **Q.** Did you speak at it?

16 **A.** No.

17 **Q.** You created a video recording of what transpired when
18 Cottonwood Heights Police Department officers arrived, didn't
19 you?

20 **A.** I started the video well before their arrival.

21 **Q.** And that included what transpired when Cottonwood Heights
22 Police Department officers arrived?

23 **A.** It did.

24 **Q.** I'm going to play just a short portion of one of the
25 recordings for you and ask you some questions about it.

1 **MS. WHITE:** Jen, could you play that now, please.

2 (Playing video.)

3 **MS. WHITE:** Jennifer, you can stop it now. Jen, can
4 you stop the recording now, please. Thank you.

5 **BY MS. WHITE:**

6 **Q.** All right. So the recording that you hear yelling
7 throughout that, things such as, "Oh, my gosh, that's BS, I
8 don't have to get back," that's your voice, isn't it?

9 **A.** It is.

10 **Q.** And this is what you recorded on your phone?

11 **A.** Yes. This is some time into the recording, but yes, I
12 recorded this.

13 **MR. SYKES:** Judge, this is Bob Sykes again. I don't
14 really see how this is relevant. You know, this was set for a
15 three-hour hearing. Ms. White's been going over an hour and a
16 lot of this is totally irrelevant. I mean I think it helps us,
17 but I think it's irrelevant. I want to get on with the
18 hearing.

19 **THE COURT:** I'll let her ask some questions about the
20 video, but you make a fair point, Mr. Sykes, that this has been
21 going on for a while. I think there's no question that
22 Ms. Bruce's testimony is -- I mean she's one of the key
23 witnesses here, so -- but yeah, I understand. So let's --

24 You can ask some questions about this, Ms. White, but
25 tell me about how much more you have for Ms. Bruce.

1 (Outside audio interference.)

2 **MS. WHITE:** Sorry. We've --

3 **THE COURT:** Let's -- we need the people who are not
4 participating here to be on mute. All right.

5 All right. Ms. White, do you have an estimate of
6 about how much more time you're likely to need with Ms. Bruce?

7 **MS. WHITE:** Probably about a half an hour, and I
8 believe Mr. Sykes went about an hour. We also have to remember
9 that we had a ten-minute break, so I haven't been going nearly
10 as long as he went with Ms. Bruce.

11 **THE COURT:** And then, Mr. Sykes, you wanted to
12 call -- remind me who you wanted -- you wanted to talk to
13 Ms. Mikell; right? Mr. Sykes?

14 **MR. SYKES:** Yes. I wanted to -- Ms. Mikell, but
15 these are very brief, by the way. I want to do Officer Davies
16 and Chief Russo and Betenson, but I've got less than five
17 minutes, more like three minutes of questions for each.

18 **THE COURT:** Okay. I think we're okay for a little
19 bit longer, Ms. White, but you know -- and I recognize that
20 Ms. Bruce's testimony is important, so you can have a little
21 bit longer, but do be mindful that, you know, we're well into
22 the allotted time here.

23 **MS. WHITE:** Yes, Your Honor. Thank you.

24 **BY MS. WHITE:**

25 **Q.** And that was you, Ms. Bruce, arguing with the officers

1 about their authority, wasn't it?

2 **A.** No. I was not arguing about their authority. I very much
3 wanted to see who they were tasing at the top of the driveway.
4 I was very concerned for the safety and well-being of my
5 constituents.

6 **Q.** Well, that's an interesting point you make because you
7 claim that the officer right in front of you was tasing
8 someone, didn't you?

9 **A.** No, the officer right in front of me was not the one with
10 the taser.

11 **Q.** Who were you claiming was tasing someone?

12 **A.** At the top of the driveway, you can pause it and see the
13 taser streams coming off the body.

14 **Q.** Okay. But you were arguing with the officers about their
15 authority to do so, weren't you?

16 **MR. YOUNG:** I'm going to lodge an objection. It
17 misstates the evidence.

18 Go ahead.

19 **THE COURT:** All right. I'll let Ms. Bruce just
20 respond by saying what she thinks was going on, if she thinks
21 that's an inaccurate characterization.

22 **THE WITNESS:** Yeah, I was not arguing about police
23 authority.

24 **BY MS. WHITE:**

25 **Q.** Really? Because I heard you say, "You have no right to do

1 this." Do you not hear that on the recording?

2 **A.** I would agree that that was an overreach of power, to tase
3 and arrest people because of water droplets from a squirt gun.

4 **Q.** But my question to you was: You were arguing with them
5 about their authority to do what they were doing in the moment,
6 weren't you?

7 **A.** I don't know. I've never characterized it that way in my
8 own mind.

9 **Q.** And you were interrupting them as they were trying to
10 address a very hostile and volatile crowd, weren't you?

11 **A.** Can I consult with my lawyer for a second?

12 **Q.** No. There's a pending question. You need to answer.

13 **THE COURT:** All right. You can answer the question
14 and then you can consult.

15 **MR. YOUNG:** Your Honor, I'm going to have to lodge an
16 objection. The city has lodged criminal charges against
17 Ms. Bruce that touch upon this very instance. And so I think
18 I'm probably obligated to tell her not to answer, given that
19 she has a right to a defense in that case. And I don't --
20 again, I'm straining to find the relevance to the issues that
21 we're talking about here today.

22 **MR. SYKES:** Your Honor, this is Bob Sykes. I would
23 add to that objection. I think Ms. White's gone far afield,
24 far afield on this. It's a desperate attempt to try to make
25 someone look bad who is telling the truth.

1 **MS. WHITE:** Your Honor, we don't have a problem with
2 her not answering the question based on the instruction of her
3 counsel to plead the Fifth, but we are entitled to an adverse
4 inference then to specific questions that we ask.

5 **THE COURT:** You're entitled to request an adverse
6 inference.

7 **MS. WHITE:** [Inaudible] Your Honor.

8 **THE COURT:** All right. Okay. And I think that's
9 fair enough, if there's potentially criminal charges relating
10 to that. You know, what I said with regard to the civil
11 lawsuit would apply with even greater force here then.

12 So I listened to the video, I heard what I heard.
13 Ms. White, I'll let you, if you want to take one minute to kind
14 of make -- point out anything that you want me to notice about
15 the video, that's fine, but I'm not going to require the
16 witness to answer specific questions given that it might be
17 relevant to a criminal case.

18 **MS. WHITE:** Okay. So, Your Honor, the adverse
19 inference that we would ask the Court to take is that Ms. Bruce
20 was hostile and interrupting the officers as they were trying
21 to deal with a very hostile and volatile crowd. She was
22 expressing her displeasure with their actions, arguing with
23 them about their authority, and that she continued to advance
24 on them and not follow their instructions to stay back as they
25 were trying to get the crowd under control.

1 **THE COURT:** All right. Thank you. I'll take that
2 request under advisement and you can continue with your
3 cross-examination.

4 **MS. WHITE:** We would also move for the admission of
5 the recording.

6 **THE COURT:** Are there any objections to that,
7 Mr. Sykes, Mr. Young?

8 **MR. SYKES:** This is Bob Sykes, Judge. I'm sorry
9 Michael, I didn't want --

10 **MR. YOUNG:** Go ahead, Bob.

11 **MR. SYKES:** Okay.

12 I object on the grounds of relevance. I do not see
13 how that is relevant to whether this woman saw a video on
14 July 12th or -- June 12th or 13th, 2018.

15 **THE COURT:** All right. Thank you. I'll take that
16 under advisement.

17 **MR. YOUNG:** Your Honor, and I'm sorry, I don't mean
18 to gum up the works, but I'm not Ms. Bruce's defense counsel.

19 I think a ruling on an adverse inference in this
20 case, again, could be used in the other civil lawsuit. I'm not
21 sure how it could potentially be used in a criminal case
22 because I'm not a criminal lawyer. I'm wondering if Your Honor
23 would indulge a ruling on just the relevance of that
24 questioning. If Your Honor finds that it's not relevant today,
25 then I don't have to instruct her not to answer and then we

1 don't have this adverse inference issue.

2 Otherwise, I think I'm going to have to request leave
3 to brief the adverse inference issue because I don't, again,
4 want to prejudice Ms. Bruce in either the criminal or the other
5 pending civil lawsuit for questions that, again, we did not
6 anticipate being asked about today, given that her declaration
7 was very narrow.

8 **THE COURT:** All right. No, I understand.

9 All right, Mr. Young, if you would like to submit a
10 brief on that, you may do so, no later than -- well, we have
11 Thanksgiving coming up.

12 Do you think you could provide whatever you think is
13 necessary by close of business next Wednesday or do you need
14 more time than that?

15 **MR. YOUNG:** We'll get it done.

16 **THE COURT:** All right. Thank you. Then you're free
17 to submit a brief on that by that point.

18 The city is free to respond, let's say within --
19 let's say a week from November 30th, so I'm not going to make
20 you work over Thanksgiving, Ms. white. So if Mr. Young submits
21 a brief on the 25th, I'd ask you to submit any response, if you
22 have one, by December 7th.

23 **MS. WHITE:** And is that on the admission of the
24 recording that we just played, Your Honor?

25 **THE COURT:** I think it's on whether or not an adverse

1 inference of any sort is appropriate here.

2 **MS. WHITE:** Okay.

3 **MR. SYKES:** Judge, Bob Sykes here. I'm not invited
4 to respond to that, am I? I don't want to.

5 **THE COURT:** You're welcome to if you'd like but
6 you're not required to.

7 **MR. SYKES:** I'll pass. Thank you.

8 **THE COURT:** Okay. Thank you.

9 Okay, Ms. White, please proceed.

10 **MS. WHITE:** Your Honor, I've moved for admission now
11 of the recording that we just showed of the section of the
12 protest.

13 **THE COURT:** And Mr. Sykes has objected on the grounds
14 of the relevance and I've said I'll take that under advisement.

15 **MS. WHITE:** Okay. And may I please add the bases for
16 why I think it is admissible in response to Mr. Sykes?

17 **THE COURT:** You may.

18 **MS. WHITE:** It is admissible under Rule 613 as a
19 prior statement. It is relevant to show her credibility and
20 her motive under 404(b)(2). And it is also admissible under
21 803(1) as a present sense impression.

22 **THE COURT:** All right. I don't understand Mr. Sykes
23 to be really disputing the points of its potential
24 admissibility, other than just on the grounds of its -- what he
25 says is its fairly attenuated relevance, but I understand your

1 response to that is it would create a motive, perhaps --

2 **MS. WHITE:** Thank you.

3 **THE COURT:** -- to be less than candid. Thank you, I
4 understand your argument.

5 **MR. SYKES:** Yeah, I would just say, Judge, under
6 613 -- hold on a second. Let me just get myself -- excuse me,
7 Judge, I'm just a country lawyer. I'm still getting used to
8 this Zoom stuff.

9 **THE COURT:** You say that a lot. You say that a lot.

10 **MR. SYKES:** But a prior statement has to be
11 inconsistent with something she's saying here today to come in
12 under that rule and it's not. You know, it's a totally
13 different event. It's an event about police misconduct on
14 August 7th to try to squelch a protest, you know. And it has
15 nothing to do with anything she said about the existence of a
16 video of the Zane James shooting, which has been covered up.
17 And so I don't see the relationship there and I don't think 613
18 applies for that reason.

19 **THE COURT:** All right. Thank you.

20 **MR. SYKES:** That's my humble country lawyer opinion.

21 **THE COURT:** All right. Thank you, Mr. Sykes.

22 Again, I'm not going to rule on that right now, but
23 I'll take it under consideration with the points that both of
24 you have made.

25 **MR. SYKES:** Thank you.

1 **THE COURT:** Ms. White, please move on.

2 **MS. WHITE:** Yes. Thank you, Your Honor.

3 **BY MS. WHITE:**

4 **Q.** All right. Ms. Bruce, you also recorded yourself leaving
5 the protest, didn't you?

6 **A.** Leaving the protest? Sorry. There was a bleep.

7 **Q.** You also created a recording of yourself as you were
8 driving away, leaving the protest; correct?

9 **A.** Correct.

10 **Q.** All right. I want to play that for you and ask you a
11 couple of questions about that.

12 **MS. WHITE:** Jennifer, can you please play that?

13 **MR. YOUNG:** And again, your Honor, I'm happy for her
14 to ask her questions but I'm just -- we're straining relevance
15 at this point. So I'm just going to renew the objection for
16 the same reasons of the previous video.

17 **THE COURT:** Understood. I'll listen to this and then
18 I'll decide.

19 **MR. SYKES:** Judge, I just want to also add my
20 objection. I think it's irrelevant and possibly prejudicial to
21 this witness who has sacrificed a lot to come here, in view of
22 all the threats and the intimidation she's had. I just don't
23 think it's relevant.

24 **THE COURT:** Okay. I understand. I'm going to listen
25 to it, though, and I'll let Ms. White say why she thinks it's

1 relevant and then I will decide about that as well.

2 (Playing video.)

3 **MS. WHITE:** Your Honor, I'm wondering if I, instead
4 of asking the questions, need to proffer what it is we think
5 this shows and how it's relevant.

6 **THE COURT:** Why don't you proffer that first and then
7 we'll decide.

8 **MS. WHITE:** All right.

9 We are offering this recording and would move for its
10 admission, because it shows that -- contrary to the prior
11 recording, she claimed in the prior recording she almost fell
12 to the ground. In this recording, she claims she was punched
13 in the throat and shoved to the ground. And so her statement
14 in this recording, that she was shoved to the ground, is not
15 true and shows her -- and it goes to her credibility as well as
16 the motive for her statements.

17 **THE COURT:** Okay. Mr. Sykes, do you want to respond
18 to that, or Mr. Young?

19 **MR. SYKES:** Yeah, I object, Your Honor. I think,
20 number one, it's irrelevant, and number two, it isn't connected
21 up to whether or not there's a video. I mean, you know, maybe
22 she lied -- maybe she lied and said she voted for Joe Biden but
23 she really voted for Trump. So what? It doesn't make any
24 difference, you know.

25 And so this is really irrelevant and takes us far

1 afield on a day where we're consuming precious court time. I
2 object.

3 **THE COURT:** Thank you. And to the extent that the
4 purpose is just to show some inconsistency between the
5 statements in the two videos, I do think that is too far afield
6 to be helpful.

7 To the extent that, you know, this is further
8 evidence of, you know, potential bad blood, if you will,
9 between Ms. Bruce and the police department, sure, it shows
10 that, but this is getting awfully cumulative.

11 Ms. White, do you want to speak to that?

12 **MS. WHITE:** Yes, Your Honor.

13 If she makes a statement just moments -- about a
14 recording that happened just moments earlier, that she had a
15 copy of it, and that wasn't true, then how are we to believe
16 what she said she saw, an alleged recording of a shooting
17 almost two and a half years earlier was true?

18 **THE COURT:** All right. Thank you. I understand your
19 argument. But, no, I'm not -- I think both of these videos are
20 taken at a time of emotional stress, which is obviously a lot
21 going on. If there's some inconsistencies with them, I'm just
22 not going to -- I'm not going to make too much of that. I
23 think in the heat -- you know, when things are unfolding,
24 people sometimes describe things in different ways.

25 And I don't see some kind of really huge discrepancy

1 that would -- that seemed -- certainly not enough to be
2 particularly relevant here. I will -- you know, I'll consider
3 this as well, you know, along with the other video for
4 relevance, to just potential motive. But as I said, I think
5 we're getting pretty close to cumulative stuff at this point.

6 **MS. WHITE:** Okay.

7 **THE COURT:** Ms. White, do you have anything else?

8 **MS. WHITE:** Well, yes, she made a complaint that she
9 referenced to the DA. And in it, she made additional
10 inconsistent statements about what happened, claiming what the
11 officers did. And so I mean I'd like to go into that, but I'm
12 concerned that the Court, you know, is -- I don't want to --

13 **THE COURT:** If you want to -- within seven days, if
14 you want to just outline what you think the inconsistencies --
15 I assume -- are there any -- well, okay. I mean other than
16 under relevance, I understand you're going to object, but,
17 Ms. White, if you want to just make a proffer, just showing on
18 the face of these documents why you think they're inconsistent
19 with one another, you're welcome to do that, the document and
20 the two videos.

21 **MS. WHITE:** Okay. And the complaint to the DA and
22 the DA's declination?

23 **THE COURT:** Yes. Right. You can address any
24 inconsistencies between the complaint and the two videos.

25 **MS. WHITE:** Do you want me to do that now or in

1 writing later?

2 **THE COURT:** You can just do it now. You can show me
3 the complaint and tell me what the inconsistencies you think
4 are.

5 **MS. WHITE:** All right.

6 **BY MS. WHITE:**

7 **Q.** So, Ms. Bruce, on August 5th, 2020, you submitted a
8 complaint to the District Attorney's Office about your
9 treatment at the protest; correct?

10 **THE COURT:** I'm not going to have her answer that.
11 You don't have to answer that, Ms. Bruce.
12 Just show me the complaint. I assume you have it as
13 an exhibit and tell me why you think it's inconsistent.

14 **MS. WHITE:** All right.

15 **MR. SYKES:** By the way, Judge, I join in that
16 objection. This is Bob Sykes.

17 **THE COURT:** And the objection -- actually, there
18 hasn't been an objection, but I'm assuming that you and
19 Mr. Young are going to object on the grounds of relevance
20 again. Is that correct?

21 **MR. SYKES:** Yes. And unduly cumulative also.

22 **THE COURT:** Yeah. And I'll take those under
23 advisement.

24 Go ahead. Show me what you think is inconsistent,
25 Ms. White.

1 **MS. WHITE:** Jennifer, can you scroll down please to
2 where she states that -- that she claims the officer "walked
3 briskly towards me and shoved my left shoulder," causing her to
4 stumble backwards."

5 She says nothing about an officer punching her in the
6 throat or shoving her to the ground as she claimed in the
7 recording she made in the car leaving the protest.

8 **THE COURT:** All right.

9 **MR. YOUNG:** Other than she does say that above.

10 **MS. WHITE:** I'm sorry, what?

11 **MR. YOUNG:** I mean this is sort of the issue; right?
12 We're being forced to litigate really issues that are unrelated
13 but, literally, in the document right above, she talks about
14 getting shoved in the throat. So -- and this is why -- you
15 know, we can brief adverse inferences and stuff like that, but
16 now we're kind of getting forced to litigate stuff that --

17 **THE COURT:** Yeah.

18 **MR. YOUNG:** -- quote-unquote, is relevant because it
19 may speak to her credibility?

20 **THE COURT:** Yeah, it does say right there. It says,
21 "At that point Kelly Taylor yelled get back and inserted his
22 left arm, striking me in the neck under my jaw."

23 **MR. SYKES:** Judge, Bob Sykes. I want to join in that
24 objection. I mean this is really beyond the pale.

25 **THE COURT:** Yeah, we're getting far afield. Okay.

1 I'll consider this -- I'll consider -- I'll take this and both
2 videos under advisement, Ms. White. But what else do you have?

3 **MS. WHITE:** Okay. Thank you.

4 The last one is a recording of her at a police rally
5 on police reform. And this goes to the heart of her motive,
6 and it's important for us to be able to show this recording and
7 ask about it. It doesn't have anything to do with the
8 August 2nd protest or any criminal charges related to that.

9 **THE COURT:** What's the date of the video or of the
10 event that's being videoed?

11 **MS. WHITE:** I need to ask her those questions.

12 **THE COURT:** All right. How long is the video?

13 **MS. WHITE:** It's four minutes long.

14 **THE COURT:** Okay. I'll let you show it, but I'll
15 reserve -- are there objections, first of all? Again,
16 Mr. Sykes, Mr. Young?

17 **MR. SYKES:** Yes, Your Honor --

18 **MR. YOUNG:** I don't know what the video is.

19 **MS. WHITE:** We provided copies of it to you
20 yesterday.

21 **MR. SYKES:** This is your favorite country lawyer, Bob
22 Sykes, and I object for all the same reasons that we've already
23 stated, Your Honor. We're going far afield.

24 And by the way, we got dropped on us, I don't know, a
25 whole bunch of videos and other things just yesterday, and your

1 order was to provide it last week, you know. And so I object
2 to all this and trying to ambush a witness with something that
3 has no relevance to what she saw, you know. And so I object
4 for all those reasons.

5 **THE COURT:** All right. Thank you.

6 I'll let you show it and then I'll decide what to
7 make of it. I don't -- I haven't seen the video either, so...

8 **MS. WHITE:** And, Your Honor, if I may respond to
9 Mr. Sykes's objections, it's impeachment and we're not required
10 to provide it, but out of an abundance of caution, to be open
11 and transparent, did provide it yesterday ahead of time, even
12 though we weren't required to under --

13 **THE COURT:** Okay. Thank you. You can show the
14 video.

15 **MS. WHITE:** Jennifer, can you please play that now.
16 (Playing video).

17 **THE COURT:** Okay. We've seen that now, Ms. White.
18 Why is that relevant? I mean I don't think anyone here would
19 dispute, number one, that Ms. Bruce is an advocate for police
20 reform or, number two, that, you know, she's had some specific
21 issues and disagreements with Chief Russo and the Cottonwood
22 Heights police, but what does this video add to that?

23 **MS. WHITE:** Because it encapsulates the entire theory
24 that when he said "starting over," she agreed with it. And
25 that starting over, with the Cottonwood Heights Police

1 Department, would be easier for her to accomplish if she were
2 able to show that the Cottonwood Heights City Police Department
3 lied about the existence of a recording of the Zane James
4 shooting, if they failed to provide it, if they destroyed it,
5 if they assaulted peaceful protesters and they criminally
6 charged peaceful protesters. And proving all those things
7 would help her accomplish her goal of disbanding the Cottonwood
8 Heights Police Department.

9 **THE COURT:** All right. I understand your theory.
10 I'll take -- I'm going to decide whether I consider these
11 various videos and recordings and so forth, but I'll ask
12 Ms. Bruce a couple of questions after you finish. Well, I'll
13 let Mr. Sykes see if he has recross -- or redirect. But do you
14 have any additional questions for Ms. Bruce?

15 **MS. WHITE:** The only thing, Your Honor, is to move
16 for the admission of the recording that we just played,
17 referencing Karl Moore and Tali Bruce.

18 **THE COURT:** All right. I'll take that under
19 advisement.

20 **MS. WHITE:** Thank you, Your Honor. With that, I
21 don't have any further questions. Thank you.

22 **THE COURT:** Thanks.

23 Mr. Sykes, do you have any redirect? Do you have
24 any --

25 **MR. SYKES:** Yes, Your Honor. Briefly.

REDIRECT EXAMINATION**BY MR. SYKES:**

Q. Ms. Bruce, have you been threatened by anybody since August, or even before, I guess, but with some kind of adverse legal action if you told the public or anybody about that video number two, the actual Zane James shooting? Were you threatened?

A. No.

Q. Did anybody say that it was illegal for you to talk about it?

A. No. Illegal?

Sim Gill, when I discussed it with him, cautioned me to consult my attorney regarding closed session.

Q. Okay. Did Shane Topham ask -- now, that's the city attorney for Cottonwood Heights; right?

A. Right.

Q. Okay. And he's a lawyer; correct?

A. Correct.

Q. Yeah. Did he ask you to sign a statement to the effect that you had not seen a video of the shooting?

A. Yes, he did.

Q. Okay.

MR. SYKES: A couple more questions, Judge.

BY MR. SYKES

Q. In your declaration that you filed in this court you said,

1 "Why was a taser not used in the pursuit?"

2 Okay? Now, I think this is a day or two -- let me
3 double-check that.

4 **A.** It was the morning after.

5 **Q.** Yeah. I'm looking at your e-mail of June 13th at
6 8:13 a.m., and that is Exhibit 2 to your declaration; correct?

7 **A.** Correct.

8 **Q.** Okay. You say, "Was a taser not an option with the
9 pursuit?"

10 Why did you ask that?

11 **A.** I had tossed and turned all night after having watched the
12 video, wondering why he didn't just tase him when he was in
13 such close proximity. And I -- I was so mentally and
14 emotionally exhausted by the time we left, at 1:00-something in
15 the morning. So when I woke up the next morning, I sent that
16 e-mail.

17 **Q.** And this e-mail was addressed to Mayor and Council, right,
18 and copied to Robby Russo; is that correct?

19 **A.** Correct.

20 **MR. SYKES:** No further questions. Thank you.

21 **MR. YOUNG:** Your Honor, you're muted.

22 **THE COURT:** I apologize. There was some background
23 noise that I was trying to avoid.

24 Now, Ms. White, that probably went beyond the scope
25 of your cross and should have been on direct, so do you have

1 anything you want to ask about those specific topics or --

2 **MS. WHITE:** Yes, just briefly, the affidavit that
3 Mr. Topham asked Ms. Bruce to sign.

4 **RECROSS-EXAMINATION**

5 **BY MS. WHITE:**

6 **Q.** He asked you that. Did he threaten you in any way when
7 you declined to sign it?

8 **A.** No. I guess we were talking about gaslighting. There was
9 some pressure like, hey, everyone else is signing, but no,
10 there was no threat.

11 **Q.** And in fact, Mr. Topham asked you then, "what would you
12 like to put in your declaration," didn't he?

13 **A.** I don't recall him asking.

14 **Q.** Well, you don't recall specifically, either by e-mail or
15 by conversation, Mr. Topham or someone else [background
16 noise] giving you an opportunity to [inaudible]?

17 **A.** I don't remember Mr. Topham asking.

18 **MR. SYKES:** Heather, would you mind re-asking that
19 question. We had some interference from Ben I, whoever that
20 is. So would you mind re-asking that question.

21 **MS. WHITE:** Sure.

22 **MR. SYKES:** Thank you.

23 **BY MS. WHITE:**

24 **Q.** Do you deny that you were given an opportunity to say
25 anything you wanted to in the declaration to submit to the

1 Court?

2 **A.** I don't deny that.

3 **MS. WHITE:** Okay. Nothing further. Thank you.

4 **THE COURT:** All right. Thank you.

5 Ms. Bruce, I'm just going to ask you two or three
6 questions in a way that doesn't in any way prejudice your other
7 litigation and so forth.

8 I gather you don't dispute that you're an advocate of
9 police reform and that you've been quite critical on occasion
10 of the Cottonwood Heights police force; correct?

11 **THE WITNESS:** Correct.

12 **THE COURT:** And you don't dispute that you've had
13 some specific negative interactions with Chief Russo and some
14 of the other officers; is that correct?

15 **THE WITNESS:** Correct.

16 **THE COURT:** Is that -- does your advocacy -- does
17 your desire to see the Cottonwood Heights police force
18 reformed, or perhaps eliminated and merged into the Unified
19 force, or just more general, your desire for police reform, has
20 that colored your testimony in any way today about the video?

21 **THE WITNESS:** No. Absolutely not. I have a hard
22 time seeing how these are even associated. Officer Davies
23 works for Herriman and has for a couple of years now.

24 **THE COURT:** All right. Thank you. And have the
25 negative interactions that you've had with Chief Russo or --

1 and other -- you know, potentially other members of the
2 Cottonwood Heights police force, has that colored your
3 testimony in any way today?

4 **THE WITNESS:** No, absolutely not.

5 **THE COURT:** Okay. All right. Thank you.

6 I think, Mr. Sykes, if you want to move on to your
7 next witness, we'll do that.

8 **MR. SYKES:** Judge, will it be possible to take a
9 five-minute break?

10 **THE COURT:** Yeah, it would. Absolutely.

11 **MR. YOUNG:** And, Your Honor, I understood the
12 exclusionary rule has been invoked. I don't know if that
13 necessarily excludes Ms. Bruce, but I think we're prepared to
14 log off unless you need us.

15 **THE COURT:** Ms. White or Mr. Sykes, is there any
16 reason why we can't let Ms. Bruce go at this point?

17 **MS. WHITE:** No, Your Honor.

18 **THE COURT:** All right. Well, Ms. Bruce, thank you
19 for your testimony today.

20 **MR. SYKES:** We have no objection, Judge. We have no
21 objection.

22 **THE COURT:** All right. Thank you. Ms. Bruce, thank
23 you for your testimony. You're excused now and I appreciate
24 your willingness to speak with us today. Thank you.

25 **THE WITNESS:** Thank you.

1 **MR. YOUNG:** Thanks, Your Honor.

2 **MS. WHITE:** Could we please know who the next witness
3 is so that we can get that person ready?

4 **THE COURT:** Let's do that.

5 Mr. Sykes, why don't you let them know and then we'll
6 take our break.

7 **MR. SYKES:** Judge, I was thinking Christine Mikell.

8 **MS. WHITE:** We'll have her ready to go then.

9 **THE COURT:** All right. Very well. Thank you.

10 **MS. WHITE:** Thank you.

11 **THE COURT:** We will come back at -- how about at
12 4:00.

13 (A recess was taken.)

14 **THE COURT:** All right. Mr. Sykes, why don't you
15 formally call the witness and then we'll have the courtroom
16 deputy place her under oath.

17 **MR. SYKES:** Okay. I call Christine Mikell.

18 **THE COURTROOM DEPUTY:** Please raise your right hand.

19 You do solemnly swear that the testimony you shall
20 give in the case now before the Court to be the truth, the
21 whole truth and nothing but the truth, so help you God?

22 **THE WITNESS:** I do.

23 **THE COURTROOM DEPUTY:** Thank you. If you'll please
24 state your full name and spell it for the record.

25 **THE WITNESS:** Christine Watson Mikell,

1 C-H-R-I-S-T-I-N-E, Watson, W-A-T-S-O-N, Mikell, M-I-K-E-L-L.

2 **THE COURTROOM DEPUTY:** Thank you.

3 **CHRISTINE MIKELL,**

4 called as a witness for and on behalf of the plaintiffs, being
5 first duly sworn, was examined and testified as follows:

6 **CROSS-EXAMINATION**

7 **BY MR. SYKES:**

8 **Q.** Ms. Mikell, if you could just briefly tell us who you are.
9 And by the way, do you have an attorney representing you here
10 today?

11 **A.** I do.

12 **Q.** Who is that?

13 **A.** Heather Smith.

14 **Q.** Heather who?

15 **A.** Oh, White. I'm sorry. Oh, my gosh. Heather White,
16 sorry, with Snow, Christensen & Martineau. I'm sorry. I've
17 never had to do one of these before. I apologize.

18 **Q.** She goes by a lot of names.

19 So Heather White is your attorney for this proceeding?

20 **A.** That's correct.

21 **Q.** All right. And just tell the Court briefly, if you would,
22 a little bit about your background, your -- you know, your
23 business background, et cetera.

24 **A.** Sure.

25 As I said, my name is Christine Mikell and I'm a small

1 business owner in Sandy, Utah. I have my own renewable energy
2 company that I've had for about -- almost ten years. Before
3 that, I worked for a smaller developer. Before that, I worked
4 for the State of Utah and started their renewable energy
5 program for the state.

6 **Q.** Try to do a better job this winter so we have better air
7 to breathe, if you would. Okay?

8 **A.** Yes.

9 **Q.** Just teasing.

10 All right. Have you had conversations with anybody about
11 the existence of a video -- did you hear my examination of
12 Ms. Bruce?

13 **A.** I did not.

14 **Q.** Okay. I'm going to refer to three possible videos, three
15 incidents.

16 Number one would be a 2017 incident where a young
17 African-American male was shot by Cottonwood Heights police
18 under a bridge at night. That's video one. Okay?

19 Video two is the one that we're contesting here, would be
20 a video of a shooting of Zane James on May 29, 2018.

21 Video three would be a video of the aftermath of the
22 shooting when Zane is on the ground. Okay?

23 Those are three incidents. So if I refer to video one,
24 two and three, you know what I'm talking about. Okay?

25 **A.** Yes.

1 Q. Does that make sense? Thank you.

2 Talking about video two now, okay, the allegation that
3 there is a video of Zane James's shooting by a Cottonwood
4 Heights police officer, have you had -- have you told people at
5 any time that there was such a video?

6 A. No.

7 Q. Never?

8 A. Of video two, you're asking me?

9 Q. Video two, yeah, of Zane James's shooting.

10 A. No, I have not. If I had seen a video like that, that
11 would be indelible in my mind and I could not ever erase it.

12 Q. Okay. Didn't you tell Mayor Petersen, at a -- at some
13 point, that you had -- at least you thought you had seen such a
14 video?

15 A. I don't recall that, sir, no.

16 Q. You don't recall, okay.

17 Did you ever tell Tali Bruce that you had seen such a
18 video?

19 A. No, sir.

20 Q. Okay. Hold on one second here.

21 What about Tiffany James, did you ever tell her you'd seen
22 such a video?

23 A. Tiffany and I had a discussion and in the discussion I had
24 mentioned that I had seen a shooting incident or something like
25 that. And that discussion, as soon as it came out of my mouth,

1 I realized that was -- I'd seen something in a closed session.
2 And so I quickly was scared and nervous, because I'm not one
3 who likes to get in trouble, and I knew that if I had said
4 something out of a closed session, that that's cause for some
5 type of litigation potentially.

6 And so as soon as I said that, I became nervous. And she
7 said she hadn't seen a video, and that's what I remember in the
8 call, and my mind spinning, because I thought, whoa, she hasn't
9 seen a video.

10 After that, I went and did some research and found that
11 that video that I had seen, video number three, was in fact the
12 video that I had seen by doing Google search. It was shown at
13 the Deseret News. It was widely shown on YouTube. So then I
14 felt better that I did not share with others this idea of a
15 video two.

16 **Q.** Let me see if I understand what you said here.

17 When you initially had the conversation with Tiffany
18 James, you told her that there was a video of the shooting but
19 then you later determined that that was an error; is that a
20 fair statement?

21 **A.** No. I feel badly that perhaps my statements have been
22 misinterpreted by Ms. James. I feel badly that it's led to
23 this meeting here, with so many people having to spend days on
24 a comment I'd made. If Ms. James had reached out to me, other
25 than saying things like, you know, you need to -- "you're

1 allowed to say what you saw," I never saw the actual shooting
2 of James, video two, as you call it. What I saw in the closed
3 session was video three.

4 **Q.** Who told you that you could not talk about a video of a
5 police shooting just because it was shown to you in a closed
6 meeting? Who told you that?

7 **A.** No one told me that.

8 **Q.** You said you got real nervous, thinking you had
9 violated some --

10 **MS. WHITE:** Mr. Sykes, let her finish her answer,
11 please.

12 **THE WITNESS:** What we're told, when we have a closed
13 session, that the contents of that meeting are to stay in that
14 meeting. That's what we're told. Those are private
15 discussions and we are not to share those discussions, because
16 they're of importance that need to be confidential.

17 **BY MR. SYKES:**

18 **Q.** Well, you're in court and you can share it now. Okay?

19 Now, what happened in that closed meeting on June 12 and
20 June 13, 2018? What happened that day?

21 **A.** I don't recall the exact date of the closed meeting. I
22 remember -- and this was a couple of years ago. I believe I
23 was a new council member. This is not something that we think
24 of as happening in Cottonwood Heights, a small town. And I
25 recall seeing a video and being told by our chief of police

1 what happened that day.

2 I think that for all of us, it was a sad day. I know it
3 was. I think all of us probably had tears in our eyes to see
4 the aftermath of this. And that's what I recall, is a
5 terrible -- all I remember is seeing the woman and hearing the
6 steps of the police officer and ripping the shirt and that was
7 what I saw.

8 **Q.** Why was -- I guess what I'm asking, why was the meeting
9 closed? What is it about seeing a video of -- by your
10 testimony, of the aftermath of a shooting that would cause this
11 to be a closed meeting, please? Tell me.

12 **MS. WHITE:** Objection. It calls for a legal
13 conclusion. She can -- I think she can testify as to her
14 understanding, but as to why it was actually closed,
15 Your Honor, I think that's a legal conclusion.

16 **THE COURT:** That's fair.

17 Mr. Sykes, why don't you just modify your question to
18 ask about her understanding.

19 **MR. SYKES:** Yeah.

20 **BY MR. SYKES:**

21 **Q.** You were apparently told it was a closed meeting and you
22 couldn't talk about it; right?

23 **A.** Sir, I -- it's been a few years, but I believe that's
24 what -- I'm testifying I believe that's what it was, a closed
25 session. I wasn't allowed to talk about it when I was speaking

1 to Ms. James. When I mentioned it, I was horrified that I
2 wasn't supposed to say anything. And that's -- that's how it
3 occurred in my memory, so --

4 **Q.** Give us your best recollection of what was told to you and
5 by whom on the night of June 12th, 2018, when this meeting
6 started --

7 **A.** I'm sorry.

8 **Q.** -- about closing it.

9 **A.** I don't recall what the contents of that were. I assume
10 that Shane Topham said that we're about to see something that
11 occurred in our -- you know, within our police force, and this
12 is a closed meeting. And when I hear "closed meeting," that
13 means that that's -- those contents are supposed to be
14 maintained in my brain and not shared with others.

15 **Q.** So your recollection is that Shane Topham said something
16 about it at the closed meeting and you relied on his opinion;
17 is that the idea?

18 **A.** That's -- yes. He's our city attorney, he sits at all of
19 our meetings and usually reminds us, if it's a closed meeting,
20 what the requirements are from us.

21 **Q.** As you were watching the video, did it ever occur to you
22 at that time that, why on earth would this be closed, the
23 public has a right to know? Did that ever occur to you?

24 **A.** I believe I was elected at the end of 2017. I was sworn
25 in in 2018. I was a fairly new elected official. As I said,

1 I'm a small business owner. I have three children and this is
2 a city council position, I take it seriously, but I -- I would
3 assume that my city attorney would tell me [inaudible glitch in
4 audio] and that's what I was relying on.

5 Q. Okay. Now, let me ask you this: When Tiffany James
6 approached you and wanted to talk to you, was her stated
7 objective to talk to you about police reform in general?

8 A. That's correct.

9 Q. Did she also say, "I want to talk to you about police
10 reform in Cottonwood Heights City"?

11 A. I don't recall exactly what she said.

12 Q. Okay. Now, let me read you something from her declaration
13 and see if that refreshes your recollection.

14 Now, this is a declaration she filed a few days ago, last
15 week. And if you have it there, I'm on page 8. I don't think
16 I can call that up easily, but --

17 MS. WHITE: I have a copy. Hold on, let me pull it
18 up.

19 MR. SYKES: It's a very short passage.

20 MS. WHITE: Are you referring to the November 9th
21 declaration, Bob?

22 MR. SYKES: Yes.

23 MS. WHITE: And what page are you and what paragraph?

24 MR. SYKES: Page 8.

25 MS. WHITE: Page 8 and what paragraph?

1 **MR. SYKES:** There's -- that many fingers, page 8.

2 Okay?

3 **BY MR. SYKES**

4 **Q.** Bottom paragraph, I'm going to read this to you, and ask
5 you if this refreshes your recollection of a conversation.

6 This is Tiffany now talking about a conversation with you.

7 "I was explaining," and I think she means to you, "how
8 there was no mention to the media by CHPD or in the District
9 Attorney's report that Zane was shot twice in the back, and
10 that neither Officer Casey Davies nor the other three officers
11 were wearing body cameras or had car cameras on during the time
12 of the shooting."

13 Okay? Are you with me?

14 **A.** I am with you, yes, sir.

15 **Q.** "As I explained this, Christine seemed to become more
16 frustrated. At one point she interrupted asking pointedly,"
17 and this is in quotation marks, "'So you have not seen the
18 video?' Because I had fully accepted both CHPD's and the DA's
19 statements to our family, that there was no body camera video
20 of the shooting, I felt confused and asked," this is in quotes
21 now, "'do you mean of the actual shooting? We were told there
22 was no video of the actual shooting, just after the shooting.'"

23 "Christine answered very sarcastically and scoffed, 'Oh,
24 yeah, there is a video.'"

25 Do you see that?

1 **A.** I do, sir.

2 **Q.** Do you recall that conversation?

3 **A.** I think I shared with you what was going through my mind.
4 I think of myself as an honest person and I am the type of
5 person that feels passionate about things. And if there was an
6 actual video of the shooting, I would fight for Ms. James or
7 for Zane and his family with all of my heart. I think anybody
8 who knows me would know that about me, that I would do that,
9 but that's not what I saw. I saw a video, video number three.

10 I'm not -- I don't believe that I'm going to respond
11 sarcastically or scoffing, I don't believe that's me. There
12 could be several things going on when she called me, but I
13 don't believe that to be me. And I mentioned that once I
14 mentioned this video, I felt very uncomfortable, thought I may
15 have revealed confidential information.

16 **THE COURT:** Yes, Ms. White?

17 **MS. WHITE:** We couldn't hear Bob for a minute. Were
18 we the only people that lost that sound?

19 **BY MR. SYKES:**

20 **Q.** Have you ever read the play Hamlet?

21 **A.** Have not.

22 **Q.** My question was very simple.

23 Did you or did you not say the things that I just quoted
24 you from Tiffany James's sworn affidavit?

25 **A.** I've read Tiffany James's sworn affidavit and I would say

1 that there are many items in her affidavit that I don't recall
2 or believe are accurate. Some of the detail that she provides
3 in here I am quite certain I was never privy to or heard from
4 her. And when I read it, it seemed to be new information.

5 I know Ms. James is suffering. This is a horrible time
6 for everyone, but I don't believe -- as I said, as we -- as I
7 read the contents of her affidavit, I don't believe that some
8 of the things that she said in here were said to me. So I
9 don't believe that that is the kind of reaction I would have,
10 in terms of scoffing and feeling frustrated.

11 **Q.** That's your answer to my question. Right?

12 **A.** That's my answer.

13 **Q.** Me thinkst thou protesteth too much.

14 **MR. SYKES:** Judge, can I have one second?

15 **MS. WHITE:** Your Honor --

16 **MR. SYKES:** I'm almost done.

17 **MS. WHITE:** Objection, argumentative, Your Honor.

18 **MR. SYKES:** I'll withdraw it.

19 **THE COURT:** All right. You can have a second,
20 Mr. Sykes.

21 **BY MR. SYKES:**

22 **Q.** I have another question for you but it will be very brief.

23 Mayor Petersen's declaration, okay, and I think he's the
24 current mayor, and not the past mayor, says, and I quote, "At a
25 separate closed session of the Cottonwood Heights City Council,

1 I heard Councilmember Mikell say that she had seen a video of
2 the shooting of Zane James."

3 Now, is he mistaken when he said under oath that he had
4 heard you say you had seen a video of a shooting of Zane James?
5 Is he mistaken?

6 **A.** I believe he is mistaken. I've never -- I don't recall
7 ever talking to him about this case at all.

8 **Q.** I think it's document 50 or 56 -- document 50, dash,
9 whatever, Judge, I think it's 11 -- but anyway, it continues on
10 then, Ms. Mikell --

11 **MS. WHITE:** Your Honor, hold on. Can I pull up a
12 copy of this? Because I think it may have been misquoted and I
13 need to --

14 **MR. SYKES:** I hope not.

15 **THE COURT:** What's the paragraph number and the --
16 it's the -- you know which declaration it is, Ms. white;
17 correct? What's the paragraph number?

18 **MR. SYKES:** Give me a half a second, Judge.
19 Paragraph 4 -- paragraph 5. I'll read it again.

20 **MS. WHITE:** Hold on. Can you wait until I get to it,
21 please.

22 **MR. SYKES:** Sure. Absolutely. Absolutely.

23 **MS. WHITE:** Thank you.

24 **MR. SYKES:** Absolutely.

25 **MS. WHITE:** And are you referring to the August 13th

1 or the November 4th?

2 **MR. SYKES:** I think it's November 4th, November 4th.

3 **MS. WHITE:** Sorry, that's Doug Petersen. You're
4 referring to Michael Petersen?

5 **MR. SYKES:** Michael Petersen. Looking right at it.

6 **MS. WHITE:** November 2nd or August 13th?

7 **MR. SYKES:** He signed it November 2nd.

8 **MS. WHITE:** November 2nd, okay. And what paragraph?

9 **MR. SYKES:** Exhibit 11, paragraph 5.

10 **BY MR. SYKES**

11 **Q.** I'm going to read this again, Ms. Mikell.

12 Are you with me? Are you with me?

13 **A.** Yes.

14 **Q.** Okay. Good.

15 "At a separate closed session of the Cottonwood Heights
16 City Council, I heard Councilmember Mikell say that she had
17 seen video of the shooting of Zane James."

18 Now, my question was: Is that an accurate statement by
19 Michael Petersen, Mayor?

20 **A.** I don't recall ever saying that I had seen the shooting of
21 Zane James. The only thing that I could think of that would be
22 where somebody could have misconstrued what I said is something
23 along the lines of -- and I believe that this could have
24 happened to Tali, if she read the brief, was if you read the
25 brief that was written by the James family about the shooting,

1 that you could conjure up what it would look like. But I've
2 never said, to my recollection, to Mr. Mike Petersen, that I
3 had seen the shooting of Zane James. And if I had, then
4 perhaps he misunderstood it for what I call video three.

5 **Q.** Isn't it true that what happened that night, at that
6 meeting that Mike Petersen is referring to, is that they
7 gaslighted you and convinced you that you had seen a video of a
8 September 2017 shooting? Isn't that what happened that night?

9 **A.** I'm -- I'm a very independent person. I'm from
10 New Jersey. I played soccer in college. I was a center
11 halfback. I'm short, but I'm feisty. I'm not going to let
12 somebody gaslight that. I think anybody who knows me, who sits
13 in council meetings, know that.

14 I was not gaslighted. Tali called me at one point and
15 said, "They got to you, they called you, you've been gaslit."
16 Nobody's ever called me to tell me that I shouldn't say that --
17 you know, to say there's no video. I've not heard from
18 anybody. There is no gaslighting. And that's --

19 **Q.** I'm sorry, were you done? I didn't mean to interrupt you.
20 Were you done?

21 **A.** There has been no gaslighting. There's been no
22 intimidation.

23 **Q.** Let me read you the rest of the paragraph.

24 The same page, paragraph-- page 2, paragraph 5. "To the
25 best of my recollection, one or more members of the city

1 council clarified that such video did not exist and that she
2 must have been either referring to footage of the post-shooting
3 response or else footage related to a separate officer-involved
4 shooting in September of 2017."

5 That's what Mayor Petersen said under oath. Do you agree
6 or disagree with that?

7 **A.** I don't recall the session where we discussed this, but I
8 have told you repeatedly that the video that I've seen is video
9 three, the aftermath.

10 **Q.** Okay. Did you have a conversation with Tali Bruce about a
11 possible video shown that night, video number two?

12 **A.** I don't recall. I believe she tried to -- the only
13 recollection I have is what I would identify as her trying to
14 convince herself that there was a video number two in a call
15 that we had.

16 **MR. SYKES:** Judge, I'm sorry, I accidentally hit the
17 wrong button here. Can I have just ten seconds? Hold on a
18 second.

19 **THE COURT:** You may.

20 **BY MR. SYKES:**

21 **Q.** Let me ask you this -- oh, did we lose your attorney?
22 Shall I wait?

23 **THE COURT:** Wait just one moment. Okay. Very well,
24 you may proceed now.

25

1 **BY MR. SYKES:**

2 **Q.** I'm sorry. Did you or did you not have a conversation
3 with Tali Bruce, on or about August 3rd, about the existence of
4 the shooting video, video two?

5 **A.** I don't recall a date or time of when I had a conversation
6 with Tali. My recollection is that she told me I had been
7 gaslighted. And it seemed to me that she kept trying to
8 convince herself that there was a video two there, and it
9 seemed like she was doubting herself. I even said, "Well,
10 Tali, maybe you read the briefing of Ms. James and that's what
11 you're recalling, sort of merging the two."

12 **Q.** Let me ask -- I'm sorry.

13 **A.** My recollection is that Tali Bruce was trying to recall
14 that there was a video two, and I didn't get the impression
15 that she really believed there was a video two. And I told her
16 repeatedly that I had seen the aftermath of the shooting, as
17 I've shared with you.

18 **Q.** You're giving me very long answers to some things I'm not
19 even asking but let me be -- and it's probably just because I'm
20 a country lawyer and don't know how to ask the question, but
21 let me try again. Okay? And I'll be very specific.

22 Did you tell Tali Bruce, on August 3rd, okay, as I think
23 she just testified to, that you told her, "Was there a shooting
24 video or am I just crazy?"

25 Didn't you make that comment to Tali Bruce?

1 **A.** I don't believe I did so, sir.

2 **MR. SYKES:** No further questions.

3 **THE COURT:** All right. Thank you, Mr. Sykes.

4 Ms. White, do you have any -- I guess at this point
5 we call it redirect?

6 **MS. WHITE:** Yes, just a couple, Your Honor.

7 **REDIRECT EXAMINATION**

8 **BY MS. WHITE:**

9 **Q.** Ms. Mikell, when you had discussions with others about the
10 video relating to the James incident, what term did you use to
11 describe it?

12 **A.** I think I probably referred to it as the James shooting
13 incident or something like that.

14 **Q.** Okay. And when you were using the words "the James
15 shooting incident or something like that," to what were you
16 referring of the videos Mr. Sykes has asked you about, video
17 one, two or three?

18 **A.** Video three.

19 **Q.** Okay. Now, have you seen a recording of the actual
20 shooting of Zane James?

21 **A.** No.

22 **Q.** And do you have any information that one exists?

23 **A.** I do not.

24 **MS. WHITE:** I have nothing further. Thank you.

25 **THE COURT:** All right. Thank you.

1 Mr. Sykes, do you have anything else you need to ask?

2 **MR. SYKES:** Nothing further, Judge.

3 **THE COURT:** All right.

4 Ms. Mikell, thank you for your testimony. We
5 appreciate it and you're excused.

6 **THE WITNESS:** Thank you.

7 **MS. WHITE:** Is Officer Betenson next?

8 **THE COURT:** Mr. Sykes, who would you like next?

9 **MR. SYKES:** Officer Davies. Officer Davies.

10 **MS. WHITE:** Okay. What I'm handing Officer Davies is
11 just the attachments of the exhibits to the brief, in case he
12 needs those for reference.

13 **THE COURT:** All right. Mr. Sykes, do you want to
14 formally call him and we'll have the courtroom deputy swear
15 Officer Davies in.

16 **MR. SYKES:** I'd like to call Officer Casey Davies, I
17 think of the Herriman Police Department.

18 **THE COURT:** All right.

19 **THE COURTROOM DEPUTY:** Raise your right hand, please.

20 You do solemnly swear that the testimony you shall
21 give in the case now before the Court to be the truth, the
22 whole truth and nothing but the truth, so help you God?

23 I assume that was a yes?

24 **THE WITNESS:** Yes, I do.

25 **THE COURTROOM DEPUTY:** Thank you.

1 Will you please state your full name for the record
2 and spell it.

3 **THE WITNESS:** Casey Allen Davies, that's C-A-S-E-Y,
4 A-L-L-E-N, D-A-V-I-E-S.

5 **THE COURTROOM DEPUTY:** Thank you.

6 **CASEY ALLEN DAVIES,**
7 called as a witness for and on behalf of the plaintiffs, being
8 first duly sworn, was examined and testified as follows:

9 **CROSS-EXAMINATION**

10 **BY MR. SYKES:**

11 **Q.** Officer Davies, you -- on May 29, 2018, you shot Zane
12 James in the back, did you not?

13 **MR. JENSEN:** Objection, Your Honor. This has not
14 been permitted by Your Honor at the outset of this hearing.
15 We're not going to get into what my client -- my client's body
16 cam and the use of it.

17 **THE COURT:** Right. I am going to sustain that,
18 Mr. Sykes. You are going to need to confine yourself to the
19 things that are specific to the camera, especially with Officer
20 Davies.

21 **MR. SYKES:** Okay. Let me do this, if I can find it.
22 Where is it here?

23 Hold on one second, Judge. I need to find this.

24 (Discussion off the record.)

25 **MR. SYKES:** Just one second, Judge, I'm working

1 through a screen sharing problem here. Just give me half a
2 second.

3 **THE COURT:** All right.

4 **MS. WHITE:** Bob, if you're trying to reference any of
5 the exhibits that you attached to your brief, we have them
6 right here in hardcopy form.

7 Bob, do you want to tell me what you're looking for
8 and I can pull it up? Can you hear us?

9 **MR. SYKES:** Yeah. I wanted to show the Judge
10 document 31.3. And I'm trying to find it but I can't seem to
11 find it.

12 **THE COURT:** What is that document, Mr. Sykes, just --

13 **MR. SYKES:** Well, here. I'll just go without showing
14 it. He can look at it there and I will just narrate it. Okay?

15 **MS. WHITE:** Can you tell me what it is, please.

16 **MR. SYKES:** Yeah.

17 **BY MR. SYKES:**

18 **Q.** Officer Davies, did you sign a declaration on August 14,
19 2020, Document 31-3? Do you have it there in front of you?

20 **A.** Yeah, I believe I do.

21 **Q.** Okay. Turn to paragraph 3 of that.

22 **A.** I'm there.

23 **Q.** Okay. Let me read what you wrote there.

24 "I was not wearing my body camera during the incident
25 involving Zane James on the morning of May 29, 2018. I had

1 been on my way to work at the time and had not yet gotten to
2 the police station to pick up my body camera."

3 Is that what you wrote?

4 **A.** I actually didn't write it. I just signed the document
5 that I was asked to sign.

6 **Q.** Was that a falsehood when you signed it?

7 **A.** I'm sorry, what?

8 **Q.** Was that a false statement?

9 **A.** No, it wasn't a false statement. The way, when I read
10 that, I understood that as I hadn't picked up my body camera
11 yet.

12 Right above it, in paragraph No. 2, where it stated I was
13 an employee with Cottonwood Heights, I fixed that and put my
14 initials on it. And then at the bottom, when I read that, I'd
15 have to apologize to you that I misunderstood what that was
16 saying, but I had not picked up my body camera yet but I was at
17 the police department.

18 **Q.** You misunderstood what you were saying here?

19 **A.** I misunderstood what I was reading, yes.

20 **Q.** This is a two-page declaration; right?

21 **A.** Yes, sir.

22 **Q.** Okay. And you knew it was under oath; right?

23 **A.** Yes, sir.

24 **Q.** And you wrote, "I was not wearing my body camera during
25 the incident involving Zane James on the morning of May 29,

1 2018. I had been on my way to work at the time and had not yet
2 gotten to the police station to pick up my body camera."

3 That's what you signed; correct?

4 **A.** Yes, sir, that's what I signed.

5 **Q.** Okay. Why did you lie to the Court?

6 **MS. WHITE:** Objection, Your Honor. It's
7 argumentative.

8 **THE COURT:** Sustained.

9 **BY MR. SYKES:**

10 **Q.** Why did you make a false statement to the Court?

11 **A.** I wasn't making a false statement. What I understood when
12 I read that -- what I understood that I was signing was the
13 fact that I thought we were addressing the issue I hadn't
14 picked up my body camera yet, because I was getting ready for
15 work.

16 **Q.** Well, the statement that you signed under oath says that
17 you were on your way to work and you hadn't picked it up yet;
18 right?

19 **A.** Yes, sir. And like I said, I'd have to apologize that I
20 misunderstood that numbered paragraph.

21 **Q.** Are you aware that that same story went out to the press
22 under Lieutenant Bartlett's statement and under Chief Russo's
23 statement in 2018?

24 **MS. WHITE:** Sorry, you cut out, Bob, halfway through
25 your question. Could you please ask it again.

1 **BY MR. SYKES:**

2 **Q.** Are you aware that that same statement went out under
3 Lieutenant Bartlett's signature or a statement to the press, as
4 did a similar statement at a different time go out under Chief
5 Russo's --

6 **MS. WHITE:** Objection, hearsay and relevance.

7 Go ahead.

8 **THE COURT:** You can ask if he's aware of that, yeah.
9 So overruled.

10 **BY MR. SYKES:**

11 **Q.** Are you aware of that?

12 **A.** Can you repeat your question?

13 **Q.** Yeah. Well, Exhibit -- just a minute here -- 4, from our
14 memorandum, page 3, and this is -- was this Bartlett or Russo?
15 Bartlett, on June 13th to KSL News, "No video was recorded of
16 the officer, who was on his way to work, firing at James after
17 police say he fled on a dirt bike, and then on foot the morning
18 of May 29th."

19 **A.** So what's your question, sir?

20 **Q.** Well, that's what Lieutenant Bartlett said to the press.
21 "No video is recorded of the officer who was on his way to
22 work."

23 Is that untrue?

24 **A.** I can't really say what he said, if it is or not. I can
25 tell you that day I hadn't talked to him yet, so I'm not aware

1 what he knew or what he didn't know.

2 **Q.** Okay. Let me read to you Exhibit 5, Chief Russo, and that
3 was on October -- it's our Exhibit 5, October 9th, 2018,
4 page 3, Cottonwood Heights Police Chief Robby Russo said,
5 "Davies was on his way to work when the shooting happened -
6 he'd not yet made it to the police station to pick up his
7 camera."

8 Now, was Chief Russo wrong about that?

9 **A.** I would have to say he was wrong.

10 **Q.** Yeah. Isn't it true that you regularly misrepresented
11 what happened that morning, telling multiple people that you
12 hadn't yet been to work and that's why you didn't have your
13 camera on?

14 **MR. JENSEN:** Objection, calls for speculation,
15 Your Honor, we don't know what multiple people or multiple
16 situations are.

17 **THE COURT:** Do you want to be more specific,
18 Mr. Sykes?

19 **BY MR. SYKES:**

20 **Q.** Isn't it true, that you regularly misrepresented to
21 multiple people that you didn't have your camera on at the time
22 of the shooting because you were on your way to work?

23 **MR. JENSEN:** Same objection, Your Honor.

24 **THE COURT:** What's the basis of the objection?

25 **MR. JENSEN:** Lack of clarity, Your Honor. We don't

1 know who's -- who he's referring to, what people [inaudible]
2 situation.

3 **THE COURT:** Well, why don't you just say "did you
4 tell anyone that" or something like that. Why don't you
5 clarify it just a little bit, Mr. Sykes.

6 **BY MR. SYKES:**

7 **Q.** Well, didn't you tell multiple people?

8 **THE COURT:** That's the problem that he's objecting
9 to, is the "multiple people."

10 **BY MR. SYKES:**

11 **Q.** Well, didn't you tell Chief Russo that you were on your
12 way to work and, therefore, you didn't have your camera?

13 **A.** No, I didn't. I remained silent the day it happened.

14 **Q.** Well, you told them that afterward, didn't you?

15 **A.** That what?

16 **Q.** All right. And isn't it true you told Lieutenant Bartlett
17 that you didn't have your camera on because you were on your
18 way to work?

19 **A.** That's not true.

20 **Q.** Okay. Now, I don't think I can call this up. Your
21 counsel gave us this just yesterday.

22 **MR. SYKES:** And, Judge, I learned this yesterday
23 afternoon. That's how recently it is. Okay? And I'm
24 referring to the defense exhibits, Exhibit 10.

25

1 **BY MR. SYKES:**

2 **Q.** Interview with Casey Davies, June 18, 2018, okay? He
3 had -- this is what they call a Garrity interview. And I think
4 you know what that is, but he had his attorney with him named
5 Bret Rawson. Okay?

6 Officer Davies, turn to page 1 of that exhibit, would you,
7 please.

8 **A.** Yes, sir.

9 **Q.** And I'm down to about line 36. Okay? Actually, line 30.
10 Okay, so that morning --

11 **MR. SYKES:** And, Judge, it might be helpful, because
12 I can't show it on the screen, if you can find that. I think
13 it would be easier for you to follow it if you have it handy.

14 **BY MR. SYKES**

15 **Q.** Okay, line 30.

16 "So that morning, I think it was Tuesday morning, I came
17 in a little bit earlier than normal on my day off to work a
18 ten-hour -- to work a ten-hour seatbelt shift. So I was -- all
19 my -- all my gear and my uniform I keep in the locker room."

20 Did I read that accurately?

21 **A.** Yes, sir.

22 **MR. JENSEN:** Your Honor, my client is not going to
23 respond to any inquiries obtained from here in a statement.
24 The purpose of Garrity v. New Jersey, which is a 1967 case, is
25 to protect what is stated in that interview from being used in

1 a criminal proceeding.

2 Now, in the event any inquiries are made of my client
3 in this proceeding, and my client addresses those, he is waving
4 that Garrity protection.

5 **THE COURT:** All right. So you're going to instruct
6 your client not to respond to questions about the content of
7 that interview; correct?

8 **MR. JENSEN:** That is correct, Your Honor.

9 **THE COURT:** All right. Well, I'm going to sustain
10 that objection.

11 **MR. SYKES:** Okay. Let me read a little bit more, if
12 I could.

13 **MR. JENSEN:** Your Honor, my objection is going to be
14 the same for that entire Garrity document.

15 **MR. SYKES:** Your Honor, I don't think that Garrity
16 protects him from having to answer questions in a civil
17 context. Okay? I've seen no law on that that he's claiming.
18 And what I would recommend -- this is extremely important, it
19 goes right to the heart of the video. Okay? Let me ask the
20 questions, take it under advisement and then make your ruling
21 at a later time. Because we have very little time here, I'd
22 like to ask these questions --

23 **THE COURT:** Can you ask the questions without reading
24 them from the interview?

25 **MR. SYKES:** I could but it's helpful to read it from

1 the interview, you know. I could do it either way.

2 **THE COURT:** The problem is, my understanding of the
3 nature of the objection is that there's a potential waiver
4 issue. And I guess my concern there is, yes, ordinarily, where
5 I'm not sure about admitting evidence, I can take it under
6 consideration but, you know, if there really is a waiver issue,
7 as Mr. Davies's lawyer is arguing, the cat would be out of the
8 bag once he answers the questions, I gather.

9 **MR. SYKES:** Well, let him object and tell him not to
10 answer then.

11 **THE COURT:** Okay.

12 **MR. JENSEN:** Okay.

13 **MR. SYKES:** Tell him not to answer.

14 **THE COURT:** All right.

15 **BY MR. SYKES**

16 **Q.** And if you want to answer of some these, you can. If you
17 don't, you don't have to. Okay?

18 Line 36, "So I came in a little bit early, got ready for
19 work, was getting changed. While I was putting my uniform on,
20 I heard Officer Betenson call out that he was following a
21 motorcycle that was believed to have been the same one that ran
22 from Officer Croft, I believe."

23 Now, I've read lines 36 through 39. Did I read that
24 accurately?

25 **MR. JENSEN:** Your Honor, my client's not going to

1 answer that question.

2 **MR. SYKES:** Okay.

3 **THE COURT:** All right.

4 **BY MR. SYKES:**

5 **Q.** Let me continue, just like a few minutes more and we're
6 done.

7 **MR. JENSEN:** Your Honor, I --

8 **BY MR. SYKES:**

9 **Q.** Lines 43 through 45.

10 "At that time, I just continued to get ready because I was
11 listening to the radio where, but at the time, if it was going
12 to -- a chase again, I figured it's going to get shut down. I
13 mean I'm not going to hurry out just for nothing. So --"

14 Did I read that accurately?

15 **MR. JENSEN:** He's not going to answer that question,
16 your Honor. And with my objection I would ask that these
17 questions be stricken [inaudible] and that the articulation
18 also be stricken from the record.

19 **THE COURT:** Why is that?

20 **MR. JENSEN:** (Inaudible. Two people talking at the
21 same time.)

22 **MR. SYKES:** Judge, let me just say, too, that this
23 has already been provided to us so I think they've waived --

24 **THE COURT:** Just a moment, the reporter is having
25 trouble so let's be careful. I guess we're talking over each

1 other.

2 So to be clear about the basis of your objection for
3 even having the questions answered, or -- even having them
4 asked, or even have the document read, what is the basis for
5 that, Mr. Johnson [sic]? Is it Jensen or Johnson? I wrote
6 two.

7 **MR. JENSEN:** You're fine, Your Honor.

8 It goes against the holding in Garrity v. New Jersey.
9 Again, it opens my client up to potential litigation. When
10 this is read into the record, that makes it part of this civil
11 matter, and that's going to be able to be obtained from anybody
12 who wants to get access to it.

13 Like I said, the holding in Garrity protects my
14 client so what he says cannot be tainted and used in another
15 proceeding. And I understand that's specifically a criminal
16 proceeding, but by it now being read into the record in this
17 civil proceeding, my concern is it is opening that criminal
18 proceeding. Hence, my objection, and hence, the reason I ask
19 that it be stricken.

20 If Your Honor wants to take this document under
21 advisement and make a ruling on it at a later time, I think
22 that would be more appropriate, rather than having this thing
23 read into the record. It will also preserve the judicial
24 economy. We're getting close to the 5:00 hour.

25 **THE COURT:** All right. Now, the -- I guess the

1 defendant has already provided this document to the Court and
2 to Mr. Sykes. So is it not already in the record?

3 **MR. SYKES:** It is.

4 **MS. WHITE:** I don't know that it's in the record,
5 Your Honor. It hasn't been admitted. We haven't asked any
6 questions about it. It's been provided to counsel.

7 **THE COURT:** It's on the docket sheet; right?

8 **MS. WHITE:** It is not.

9 **THE COURT:** It is not on the docket sheet?

10 **MR. SYKES:** Of course, it would be. It was submitted
11 yesterday.

12 **MS. WHITE:** No, we -- we gave courtesy copies of
13 potential exhibits to counsel yesterday. Nothing has been --

14 **THE COURT:** Right. So it hasn't been admitted.

15 **MR. SYKES:** I would move to admit it, Your Honor,
16 it's extremely important.

17 **THE COURT:** Well, it sounds like Mr. -- that
18 Mr. Davies's counsel is going object to that. And honestly,
19 that's something -- these are significant enough issues being
20 raised that I would probably want to have briefing on that or
21 have a little bit more inquiry. So --

22 **MR. SYKES:** I need about another two or three minutes
23 and I'm done with this witness.

24 **THE COURT:** Right. Is there a way of just asking
25 what happened that morning without reading through this

1 document? Because I think under the circumstances, where it's
2 effectively been lodged but not been admitted into evidence,
3 and there's a pretty strenuous objection, I'm not inclined to
4 let you proceed further reading with it at this time.

5 **MR. SYKES:** Can I proffer what it says? It's pretty
6 important, Judge, right to the heart of the document, right to
7 the heart of the matter.

8 **THE COURT:** Okay, Mr. Sykes, I'm having trouble
9 understanding why you can't just ask him what happened.

10 **MR. SYKES:** Well, because he's going to lie. He's
11 going to lie, Your Honor. And I mean he's already lied, he
12 said --

13 **MS. WHITE:** Your Honor, that's offensive.

14 **MR. SYKES:** Let me finish. Heather, let me finish.
15 I don't interrupt you, okay?

16 **MS. WHITE:** Yeah, well, I don't call you --

17 **MR. SYKES:** He's already lied about it. He's -- he
18 said several times, including August of this year, that he was
19 on his way to work and that's why he didn't have his camera,
20 but this document shows he was at work. And the next thing I'm
21 going to read is about the camera that he saw on his way out
22 the door, allegedly. And, you know, this is extremely
23 important.

24 **THE COURT:** Why don't you proffer the document and I
25 will -- why don't you even proffer it and highlight what you

1 think is important and I will look at it. And then I will
2 allow Mr. Davies's counsel an opportunity to address whether or
3 not it would be improper to admit that. But rather than read
4 it on the record, why don't you just -- you can take that
5 document, you can highlight what you want me to read and you
6 can proffer that. And I'll -- you know, you can lodge it with
7 the Court and I'll look at it and decide.

8 **MR. SYKES:** Okay. Let me ask Officer Davies this.

9 **BY MR. SYKES:**

10 **Q.** Is it true that you were in the station that morning,
11 getting dressed and getting ready for work, before you heard
12 about Zane James?

13 **A.** I'm sorry, you broke up. Can you repeat?

14 **Q.** Isn't it true that you were in the station that morning,
15 getting ready for work, getting dressed, when you heard the
16 call come out about Zane James?

17 **A.** Yes, sir.

18 **Q.** Okay. Why did you tell -- state in your earlier
19 declaration that you were on your way to work when you knew you
20 were already at work? Why?

21 **A.** Like I already told you, I misunderstood that paragraph.
22 I was under the impression it was talking about picking up the
23 body camera.

24 **Q.** Okay. Isn't it true that on your -- when you heard the
25 statement about the chase and the alleged armed robbery, okay,

1 that you rushed to get out of there and you saw your camera in
2 the dock, your statement; is that true?

3 **A.** That's not true.

4 **MR. SYKES:** Well, may I read this?

5 **THE COURT:** You may not if it's from the report. You
6 may highlight it and lodge it.

7 **MR. SYKES:** All right.

8 **BY MR. SYKES**

9 **Q.** Now, is it true that as you were chasing Zane James, you
10 pulled up parallel to his motorbike several times --

11 **MS. WHITE:** Objection, Your Honor, this goes beyond
12 the scope of the --

13 **MR. SYKES:** It's very, very, very, very important.

14 **THE COURT:** Why?

15 **MR. SYKES:** Why? Because --

16 **THE COURT:** I understand it's important to your case,
17 but why is it important to whether or not he had his body
18 camera or there's a video?

19 **MR. SYKES:** Because, Your Honor, he intentionally --
20 he intended to use -- he says it, and you won't let me read it
21 but he says it in here, on page 7, that he intended to use
22 deadly force and knock him off of his bike and did it. He did
23 it, knocked him off of his bike, intended to kill him. He used
24 deadly force. Okay?

25 That never appears anywhere in any of the other

1 records at all. It's totally silent. That was withheld from
2 us and everybody else. Okay? I learned about it yesterday.
3 Okay?

4 **THE COURT:** You can lodge the document, you can
5 highlight anything in it you want, and you can ask him
6 questions today, but you may not quote from the document today.

7 **BY MR. SYKES:**

8 **Q.** Did you intend to run him over?

9 **MR. JENSEN:** Objection, Your Honor. This does not go
10 to what Your Honor indicated would be permitted at the outset
11 of the hearing. Questions specific to that body cam had
12 nothing to do with running anybody over.

13 **THE COURT:** All right. Can you tie that to the body
14 camera, Mr. Sykes?

15 **MR. SYKES:** Yes, I can.

16 **THE COURT:** Please try and ask him in a way that does
17 that.

18 **MR. SYKES:** Okay.

19 **BY MR. SYKES**

20 **Q.** You intended to run him over, and then, when he was
21 injured, he got up and staggered away and you caught it all on
22 your body camera; isn't that true?

23 **A.** I didn't have a body camera so I'm not sure what you're
24 talking about.

25 **Q.** And then you stated -- or did you -- did you state to

1 anybody that you wanted to finish the job that you didn't
2 succeed in doing when you hit him?

3 **MR. JENSEN:** Objection, Your Honor, he's not going to
4 answer.

5 **BY MR. SYKES**

6 **Q.** Isn't that what you said?

7 **THE COURT:** That objection is sustained.

8 **MR. SYKES:** Judge, I need about two minutes to
9 consult with my fellow counsel. I think I'm done.

10 **THE COURT:** Sure.

11 (A brief recess was taken while still connected to
12 Zoom.)

13 **MR. SYKES:** Back on the record, Judge.

14 **THE COURT:** Yes. Please proceed.

15 **BY MR. SYKES:**

16 **Q.** Is it true that your camera, body camera video, starts
17 with a crumpled motorcycle?

18 **A.** No, sir. I didn't have a body camera.

19 **Q.** All right.

20 **MR. SYKES:** No further questions.

21 **THE COURT:** All right. Thank you.

22 Ms. White, do you have any redirect?

23 **MS. WHITE:** Just a few, Your Honor.
24
25

REDIRECT EXAMINATION

BY MS. WHITE:

Q. Officer Davies, we've gone through your August 14, 2020, declaration, what you said, and it was pointed out on cross-examination that there was a statement in there that wasn't accurate. And I think you've already explained how that occurred.

Did you do anything subsequently to correct that mistake?

A. Yeah. Yes. We filed a different one that fixed the verbiage to make it more clear that I was at the office.

Q. Okay. And are you referring to the November 4th, 2020, declaration?

A. I'd have to see it but I believe that was the day.

Q. Let me have you turn to the Plaintiffs' Exhibit 7 here and ask you if that was it.

A. Yes, ma'am.

Q. And is that -- what paragraph do you see that correction in?

A. Number three.

Q. Okay. And what did you explain?

A. On this one, I clarified that I -- while I was -- oh, sorry. I was not yet on duty and had not yet picked up my body camera from its docking cradle at the police station.

Q. Okay. And did you ever have a body camera on from the time that you got to work that morning through the shooting

1 incident with Zane James?

2 **A.** No. Immediately after the incident occurred, I was
3 sequestered by the sergeant and then taken to kind of a room
4 similar to this, kind of a briefing room. And the sergeant --
5 and Sergeant Dailey maintained visual, I guess I should say --

6 **Q.** Uh-huh.

7 **A.** -- until my attorney could get present.

8 **Q.** Okay.

9 **A.** So, no, I never had the camera there.

10 **Q.** Okay. And did you have a dash camera recording in your
11 car?

12 **A.** At the time I was in a loaner car, so I don't know if
13 there was a camera or not. If there was, I wouldn't have
14 access to it.

15 **Q.** Okay. And do you recall anything -- do you recall ever
16 hearing about or being told about a dash cam or a recording or
17 anything?

18 **A.** No. I'm going off my memory, but I don't even believe
19 there was a camera in that car.

20 **Q.** Okay. You don't recall there being a camera in that car?

21 **A.** Yeah, I don't recall.

22 **Q.** Okay.

23 **MS. WHITE:** Okay. I don't have anything further.

24 Thank you.

25 **THE COURT:** All right. Thank you.

1 Mr. Sykes, do you have any recross specific to what
2 Ms. White asked?

3 **MR. SYKES:** No.

4 **THE COURT:** All right. Thank you.

5 Officer Davies, I have just one question for you.

6 **THE WITNESS:** Yes, sir.

7 **THE COURT:** I'm trying to understand the factual
8 sequence a little bit. Is it fair to say -- and just tell me
9 yes or no, and if it's no, explain why.

10 Is it fair to say that you'd arrived at the police
11 station and were in the process of getting ready for work when
12 the call came in, that you were getting in your uniform and so
13 forth? Is that what happened?

14 **THE WITNESS:** Yes, sir. We have a locker room and at
15 that time, I was accustomed to responding to work in civilian
16 clothes and then I'd switch into my uniform. And then at the
17 end of the shift, I would shower and clean up and then drive
18 home in my civilian clothes.

19 **THE COURT:** Okay. So what you're telling me is what
20 was going on when this call came in, was you were in the
21 process of getting changed into your uniform; is that correct?

22 **THE WITNESS:** Yes, sir. And I had the radio on that
23 was in my locker at the time.

24 **THE COURT:** All right. Okay. Thank you.

25 All right. Well, thank you for your testimony, and I

1 think you can be excused now.

2 **THE WITNESS:** Thank you, Your Honor.

3 **THE COURT:** And I guess if -- do we still have
4 Mr. Davies's attorney? Was it -- is he still here with us,
5 Ms. White?

6 **MS. WHITE:** Yes. Yes, he's still here.

7 **THE COURT:** Okay. What I'm going to request for both
8 you and Mr. Sykes is, I think I will give you until next
9 Wednesday, Mr. -- again, I wrote too small, is it Mr. Jensen or
10 Johnson?

11 **MR. JENSEN:** It's Jensen, Your Honor.

12 **THE COURT:** All right, thank you. Mr. Jensen, I will
13 give you until Wednesday to explain in writing your basis for
14 thinking that any reference to or use of the interview notes,
15 or the transcript of that interview, would be improper in this
16 proceeding. Is that something you could do?

17 **MR. JENSEN:** Yes, Your Honor.

18 **THE COURT:** All right. Thank you.

19 And, Mr. Sykes, I will give you until December 7th,
20 an opportunity to respond to whatever arguments Mr. Jensen
21 makes and explain why you think that the Court can and should
22 consider that interview.

23 **MR. SYKES:** Thank you, Judge.

24 **THE COURT:** All right.

25 And in terms of the actual interview, you are welcome

1 to lodge with the court -- in fact, why don't you e-mail to my
2 chambers, copying Ms. White and Mr. Jensen, so that
3 everybody -- so it's not in any way ex parte, kind of a
4 marked-up version of that interview, where you highlight just
5 what you think the key statements are. And I'm not going to
6 admit it until after I hear from both of you and decide -- you
7 know, decide about whether it's properly admitted, but I'd at
8 least like to see what it is that you think is important. So
9 if you could submit it to me in that manner.

10 **MR. SYKES:** Judge, why don't I submit you both a
11 marked-up version and an unmarked version, so you have both of
12 them?

13 **THE COURT:** That's fine.

14 **MR. SYKES:** Mr. Jensen, if you could send me your
15 e-mail, I don't know you personally, bob@sykesinjurylaw.com,
16 okay, or bob@countrylawyer.com probably, too, but
17 sykesinjurylaw is a better one. If you'll send an e-mail and I
18 will have your contact information, I'll send a copy of
19 whatever I send to you. There's lots of Jensens around so I
20 want to get to the right guy.

21 **THE COURT:** All right. Very well. And why don't you
22 submit that as soon as possible so that Mr. Jensen has in front
23 of him specifically what you're trying to use, when he submits
24 his brief.

25 **MR. SYKES:** Yeah, I can get that out tomorrow, Judge.

1 **THE COURT:** Okay. Please do.

2 **MR. SYKES:** It's kind of late tonight, people are
3 going home in a few minutes, but I'll get it out tomorrow.

4 **THE COURT:** Right. Well, we hope they're going home
5 in few minutes but we still have a few witnesses, I gather.

6 **MR. SYKES:** Yeah.

7 **THE COURT:** All right. Thank you.

8 Okay. Who do you want next, Mr. Sykes?

9 **MR. SYKES:** Chief Robby Russo.

10 **THE COURT:** All right.

11 **THE COURTROOM DEPUTY:** Raise your right hand, please.

12 You do solemnly swear that the testimony you shall
13 give in the case now before the Court to be the truth, the
14 whole truth and nothing but the truth, so help you God?

15 **THE WITNESS:** I do.

16 **THE COURTROOM DEPUTY:** Thank you. If you'll state
17 your full name, please, and spell it for the record.

18 **THE WITNESS:** Ernest Robert Russo, R-U-S-S-O.

19 **THE COURTROOM DEPUTY:** Thank you.

20 **MR. SYKES:** Chief, good to see you. How are you?

21 **THE WITNESS:** I'm well, sir. How are you?

22 **MR. SYKES:** Good.

23 **ERNEST ROBERT RUSSO,**

24 called as a witness for and on behalf of the plaintiffs, being
25 first duly sworn, was examined and testified as follows:

CROSS-EXAMINATION

BY MR. SYKES:

Q. I have just one question for you and maybe Ms. White -- is Ms. White representing you today?

A. Yes, sir.

Q. Okay.

MR. SYKES: Heather, could you turn to our Exhibit 5.

BY MR. SYKES

Q. I'll represent to you that we did a search, Internet search, consulted Dr. Google and found references to various stories about this. This one is KUTV by Cristina Flores. Okay? October 9, 2018.

Can you see that on page 1?

A. I do.

Q. Okay. And I think that they attached a link to the video -- the video number three, which is the post-shooting video. And it says, "No criminal charges for Cottonwood Heights officers who fatally shot robbery suspect."

Are you with me so far, Chief?

A. Yes, sir.

Q. Okay. And then go to page -- and I think, if I'm not mistaken, Chief, that this story was done in response to Sim Gill's letter of the same day, I believe, indicating there would be no criminal charges filed.

A. I believe that's correct, sir.

1 Q. Okay. And on page 3 it says, "Cottonwood Heights Police
2 Chief Robby Russo," which is you, "said Davies was on his way
3 to work when the shooting happened. He'd not yet made it to
4 the police station to pick up his camera."

5 Did you tell the reporter something to that effect that
6 day?

7 A. Yes, sir, I did.

8 Q. Okay. Were you aware -- by the way, at this point,
9 October, I think it's 8th -- 9th, 2018, were you aware that
10 Officer Davies had attempted to run over and kill Zane Davies
11 with his car? Were you aware of that?

12 MS. WHITE: Objection, Your Honor, this again
13 references the statement that has previously been ruled not to
14 be referred to I think at this point.

15 MR. SYKES: I'm not referencing any statement. I'm
16 just asking him if he's aware of that.

17 THE COURT: How is it relevant, Counsel --

18 MR. SYKES: Well --

19 THE COURT: -- to whether or not there was a body
20 camera, as opposed to, you know, the actual underlying lawsuit,
21 of, you know, Mr. Davies's liability?

22 MR. SYKES: That's a very good question. I think
23 it's relevant because it shows that Davies is probably lying
24 about a lot of stuff, including whether he was on his way to
25 work or not. And the fact that he tried to use deadly force

1 prior to shooting, okay, is highly relevant. So that's why.

2 **MS. WHITE:** Your Honor, this goes beyond the scope as
3 well for the hearing.

4 **THE COURT:** Yeah, I think -- I understand what you're
5 getting at for credibility, Mr. Sykes, and I think we'll handle
6 it through the procedures we discussed with the underlying
7 document and the briefing from Mr. Jensen and from you, rather
8 than asking about that. Because it is -- as I said, it may go
9 to credibility and you can make that argument, but it also
10 goes, you know, potentially to the merits of the lawsuit, which
11 you're not entitled to discovery on at this point.

12 It also potentially raises issues of possibly
13 criminal liability or whatever with the -- and waiving the
14 privilege. So let's not -- let's get to that through other
15 ways.

16 **MR. SYKES:** Fair enough. I have no further
17 questions. Thank you.

18 **THE COURT:** All right. Thank you.

19 **THE WITNESS:** May I be excused?

20 **THE COURT:** All right. Thank you for your testimony.
21 And you're excused, Chief Russo.

22 I guess, Ms. White, I actually didn't give you an
23 opportunity for redirect. Did you want any?

24 **MS. WHITE:** I don't think I had any redirect because
25 I don't -- I think there was maybe one question asked.

1 **THE COURT:** There was one question, so I assumed the
2 answer was no, but I should have asked before I excused the
3 witness.

4 **MS. WHITE:** Thank you, Your Honor. No, the witness
5 may be excused.

6 **THE COURT:** All right. Thank you.

7 **MR. SYKES:** Your Honor, Ms. White is in a hurry to
8 get home. She's got TV programs to watch.

9 **THE COURT:** I thought we all watched a streaming
10 service so we could decide what time to watch them now.

11 All right. Mr. Sykes, do you have another witness?

12 **MR. SYKES:** Just one second, Judge. Just one second.

13 Your Honor, we are done with our questions. I'd like
14 to take a five-minute break to kind of reorganize things here.
15 I think the only other witness we have, I don't know, is
16 Tiffany James. She's here. But we're done with the direct
17 examination of our witnesses.

18 We were going to call Officer Betenson but I think
19 some of the things I would ask him you've already kind of ruled
20 on, that you don't want to hear right now, like about Zane
21 being hit -- being struck by the car and stuff like that. So I
22 think we're going to just pass on Officer Betenson.

23 **THE COURT:** All right. Thank you. And so if you
24 need it, we will take a brief break, but, Ms. White, do you
25 intend to call Ms. James for cross-examination?

1 **MS. WHITE:** Yes, Your Honor.

2 **THE COURT:** Okay. Why don't we take a five-minute
3 break. Let's be back at -- let's see, my -- let's be back at
4 5:18.

5 **MR. JENSEN:** And, Your Honor, this is J.C. Jensen. I
6 believe I need to move the Court to extend my notice of limited
7 appearance now to include this brief. Can I do that just on
8 the record at this time?

9 **MS. WHITE:** Oh, I froze up.

10 **MR. SYKES:** No objection.

11 **MR. JENSEN:** I'm sorry, Your Honor, we lost audio for
12 a minute.

13 **THE COURT:** Yes. So there's no objection from
14 Mr. Sykes. Is there any objection from Ms. White to that?

15 **MS. WHITE:** No, Your Honor.

16 **THE COURT:** All right. That request is granted.

17 **MR. JENSEN:** Thank you.

18 **THE COURT:** All right. And now we will -- now we'll
19 take our recess.

20 (A recess was taken.)

21 **THE COURT:** All right. Ms. White, it sounds like you
22 can proceed.

23 **MS. WHITE:** Your Honor, we'd call Tiffany James to
24 the stand.

25 **THE COURT:** All right. The courtroom deputy will

1 swear her in.

2 **MR. SYKES:** You better say something so they'll see
3 you. Hello? Hello?

4 **THE COURTROOM DEPUTY:** Raise your right hand, please.
5 You do solemnly swear that the testimony you shall
6 give in the case now before the Court to be the truth, the
7 whole truth and nothing but the truth, so help you God?

8 **THE WITNESS:** I do.

9 **MR. SYKES:** Louder.

10 **THE WITNESS:** I do.

11 **THE COURTROOM DEPUTY:** Thank you. If you'll please
12 state your full name and spell it for the record.

13 **THE WITNESS:** It's Tiffany James, T-I-F-F-A-N-Y,
14 J-A-M-E-S.

15 **THE COURTROOM DEPUTY:** Thank you.

16 **TIFFANY JAMES,**
17 called as a witness for and on behalf of the defendants, being
18 first duly sworn, was examined and testified as follows:

19 **CROSS-EXAMINATION**

20 **BY MS. WHITE:**

21 **Q.** Ms. James, do you have a copy of your August 25th, 2020,
22 affidavit?

23 **A.** August 25th? Is that it on the screen?

24 **Q.** Yes.

25 Sorry. Do you have it?

1 **A.** I do. Yes.

2 **Q.** Okay. We're going to go to paragraph 6. And it may be
3 easier for you to look at the hardcopy that you have or on the
4 screen, whatever is better for you. Tell me when you're ready
5 for me to ask you some questions.

6 **A.** I'm on paragraph 6, yes. I'm ready.

7 **Q.** In paragraph 6, you reference an August 4th, 2020,
8 conversation you had with Council Member Christine Mikell.
9 Do you see that?

10 **A.** I do.

11 **Q.** And in paragraphs 6 through 8, you discuss issues that
12 aren't related to your son Zane's shooting; right?

13 **A.** We do.

14 **Q.** Okay. And then when we get down to paragraph 9, you talk
15 about a conversation you had with Ms. Mikell on that date,
16 about a recording related to Zane's shooting; correct?

17 **A.** I did. Yes.

18 **Q.** And in that August 25th, 2020, declaration, you claim in
19 that conversation, Ms. Mikell said, "So you have not seen the
20 video"; correct?

21 **A.** Yes.

22 **Q.** All right. And she responded to you, and you've heard her
23 testimony about that. And after she responded to you, then in
24 this August 25th, 2020 declaration, you say, "Oh, yeah, there
25 is a video." Correct?

1 **A.** Yes.

2 **Q.** Now, let's go to your November 6th, 2020, declaration,
3 which is paragraph 7.

4 Are you there?

5 **MR. SYKES:** One second.

6 **BY MS. WHITE:**

7 **Q.** And go to paragraph 7(c).

8 **A.** Ready. 7(c)?

9 **Q.** Yes.

10 **A.** Yes.

11 **Q.** Okay.

12 **MS. WHITE:** And, Jennifer, can you scroll down a
13 little bit more on that, please. Keep going.

14 **THE WITNESS:** Is this paragraph 5 -- or page 5?
15 Right? Yes. I'm there.

16 **BY MS. WHITE**

17 **Q.** I may have a wrong reference here. I'm looking for the
18 part in your declaration --

19 **A.** It's "e."

20 **Q.** It has that same conversation?

21 **A.** Yeah, page 6.

22 **Q.** Okay. Thank you.

23 **A.** Scrolling down. We've got two different --

24 **Q.** In that declaration, and it's in the November 9th
25 declaration, too, I believe, you changed your testimony to say

1 that you added the word "actual shooting" when you were talking
2 to Ms. Mikell about the video; correct?

3 **A.** I didn't change my testimony. I added to my testimony,
4 which I think I was asked to do.

5 **Q.** You added the word "actual"; correct?

6 **A.** Not in quotes. Can you show me, because you're looking at
7 a different version than I am, the exact sentence that you're
8 thinking of?

9 **MS. WHITE:** Jennifer, can you scroll -- I think you
10 need to scroll down just a little, Jennifer. Where it says
11 "the actual shooting," do you have that, where she has the
12 conversation? Let me look.

13 **THE COURT:** It looks like it's showing up now. It
14 looks like it's highlighted on the screen.

15 **BY MS. WHITE:**

16 **Q.** There we go. So you added the words "actual" --

17 **A.** I added a full sentence, yes.

18 **Q.** Okay. And you did that because you recognized that
19 without them, it was unclear whether you were referencing a
20 recording of the actual shooting or the events showing the
21 immediate aftermath; correct?

22 **A.** No. You can clearly see that it says, "We were told there
23 was no video of the actual shooting, just after the shooting,"
24 which was in my first declaration. I added the additional
25 sentence because I was under the impression that the Judge

1 wanted us to file a new declaration that was more precise from
2 the first one. And so I added the full conversation.

3 Q. Okay. And that was -- that declaration occurred on
4 August 25th, 2020, if you turn back to that.

5 MS. WHITE: Jennifer, you don't need to do that.

6 BY MS. WHITE

7 Q. But turn back to that one. And both times you say
8 something to Ms. Mikell, you say, "the shooting," not the
9 "actual shooting"; correct?

10 A. And this is the former?

11 Q. Yeah, the August 25th one.

12 A. Are you not going to show it?

13 Q. No, can you just turn to it? Do you have a hardcopy of it
14 there right with you?

15 A. I had it.

16 MS. WHITE: Jennifer, is that too much trouble to put
17 that back up on the screen?

18 BY MS. WHITE:

19 Q. There you go. It's back up on the screen now.

20 A. Yeah.

21 Q. So both of the comments that you made to Ms. Mikell, that
22 you reference in the August 25th, 2020, declaration say, "the
23 video" or she says "the video" -- "a video"; correct?

24 A. Would you repeat your question. I'm sorry.

25 Q. Yes. Okay.

1 So we're going back to the August 25th, 2020, declaration.

2 **A.** I'm with you, yeah.

3 **Q.** Okay. And you said that Ms. Mikell told you, said, "You

4 have not seen the video."

5 And you responded, "of the shooting?"

6 **A.** Yes.

7 **Q.** And then she responded, "Oh, yeah, there is a video."

8 Correct?

9 **A.** Yes.

10 **Q.** All right. Now, let's go back to the later, November 6th,

11 2020, declaration. And you added the words --

12 **A.** "Actual."

13 **Q.** -- "actual"?

14 **A.** Yes. And an additional sentence, yes.

15 **Q.** Right. And that's because you recognized without those

16 words, it was unclear whether you were referencing a recording

17 of the actual shooting or the events showing the immediate

18 aftermath?

19 **A.** No. As I said, I was being more precise.

20 **Q.** Well, you did it in response to Ms. Mikell's August 20th

21 declaration, right, stating you may have misunderstood her

22 reference to the incident or the shooting?

23 **A.** No, I don't think so. I have read Ms. Mikell's -- I've

24 read her statements, her declarations, but I'm going to -- my

25 declarations are based on my memory. I also am an honest

1 person, and also take really good notes. And so I have a
2 record of all my conversations.

3 Q. So why didn't you include the word "actual shooting" in
4 your first declaration?

5 A. When we filed our first declaration, there was an
6 understanding to be brief. And I had one even before that
7 where I didn't even name Ms. Mikell or Tali Bruce, Ms. Bruce.
8 It didn't have as much detail either. So as we've been asked
9 to provide more detail, I've gone back to my notes and my
10 records and my memory and I've put down what I remember.

11 Q. Okay. And Ms. Mikell, when she responded to you, she said
12 nothing about what the recording showed; right?

13 A. She didn't.

14 Q. Okay.

15 A. She --

16 Q. That's the answer to my question.

17 She said nothing about when she saw it; correct? She said
18 nothing about when she saw it? You didn't identify her saying
19 anything about when she saw it?

20 A. No. The whole conversation was unsolicited. She --

21 Q. That's -- you're going beyond my question so I'm just
22 going to --

23 **MR. SYKES:** Well, Your Honor, Your Honor, I object.
24 I think the witness should be able to answer it the way she
25 wants to answer it, not the way Ms. White wants it to come out.

1 So I'd appreciate it if we would let her answer the question.

2 **THE COURT:** You're welcome to follow up on that on
3 redirect, but during cross-examination, I will let the counsel
4 control the questioning.

5 **BY MS. WHITE:**

6 **Q.** Okay. And you didn't include any of those details in your
7 August 25th, 2020, or November 6, 2020, affidavits, did you?

8 **A.** Which details? The additional details in
9 each declaration?

10 **Q.** About Ms. Mikell saying anything about what the recording
11 showed or when she saw it.

12 **A.** No. Her emphasis on "the video" is what I keyed off of.

13 **Q.** Okay.

14 **A.** She said, "And you've not seen the video," and so I was
15 concerned, because I'm remembering Tali Bruce on August 2nd,
16 before the protest or the march, say the exact same thing to
17 me. So when I recognized --

18 **Q.** Well, let me stop you there.

19 So even you interpreted what Ms. Mikell said as referring
20 to the events of --

21 **A.** No, I didn't interpret it.

22 **Q.** I wasn't finished with my question. I wasn't finished
23 with my question.

24 **A.** Oh, I apologize. Sorry.

25 **Q.** All right. So even you, right there, you felt confused

1 and thought that she was referring to the video recording after
2 the shooting?

3 A. I asked for clarity.

4 Q. Okay.

5 A. And she gave it to me.

6 Q. Okay.

7 A. I said --

8 Q. All right. I think that answers my question.

9 Now, I want to go to the conversations that you had with
10 Tali Bruce about what she claims the recording of the actual
11 shooting she claims to have seen show, okay?

12 So let's go to paragraph 10 of your August 25th, 2020,
13 affidavit. And that references, in paragraph 10, a
14 conversation you had with Ms. Bruce on August 6th, 2020;
15 correct?

16 A. Let's see. Give me -- what one are you on again?

17 Q. Paragraph 10 of the August 25th. It's up on the screen,
18 if that's helpful to you.

19 A. That is helpful, but I know we had to file a revised one
20 so I want to make sure we're on the right one.

21 Q. I'm referring to the August 25th right now.

22 A. Okay.

23 Q. Paragraph 10.

24 A. Okay. I'll just go with what's on the screen.

25 Q. Yeah. Okay. And you called to ask her if she was aware

1 of a recording of the shooting; correct? That's what you said
2 in here?

3 **A.** I did. I wanted to confirm that I'd heard this from the
4 council and then --

5 **Q.** So I'm going to ask you a bunch of questions that are yes-
6 or-no questions that I don't really think involve explanation.
7 I just want to know -- I just want to confirm that that's
8 what's there. Okay?

9 And she also expressed concern about disclosing to you
10 information she had received in a closed city council meeting,
11 you included that; correct?

12 **A.** She did, yes.

13 **Q.** And despite that, you asked her, "If hypothetically there
14 was a video and what would it show?" Correct?

15 **A.** Yes.

16 **Q.** Okay. So read to me what she told you that is in bold.

17 **A.** "She said that it would show an officer pull up, get out
18 of his car and shoot four times at a person running away. I
19 asked if the person had a gun in his hands and she said he did
20 not."

21 **Q.** So I want to dissect that a little bit.

22 So she told you -- and I'm going to do a list here for
23 you -- that she saw on this recording an officer pull up -- and
24 I'm just waiting for this list to come up. It will take just a
25 minute to populate.

1 **MS. WHITE:** Jennifer, can you pull that up, please.

2 **BY MS. WHITE**

3 **Q.** So it showed an officer pull up and then an officer get
4 out of his car, an officer shoot four times at a person running
5 or at a person with a -- with no gun in his hands and that
6 person was running away.

7 Did I get all those things that she said it would show?

8 **A.** Yes.

9 **Q.** Okay. Now I want to go to your complaint, and I need to
10 have you look at a hardcopy of that that we delivered
11 yesterday, because I'm going to put some information on the
12 screen about that. So can you get a copy of that complaint
13 that we delivered yesterday from your counsel, please.

14 **A.** Sure.

15 **MR. SYKES:** I don't know that I have that handy. You
16 delivered a lot of things yesterday, less than 24 hours from
17 this hearing. Now, I have a -- is it document 25 on 5/16/19?

18 **MS. WHITE:** Just the complaint, the complaint in this
19 action.

20 **MR. SYKES:** Okay. I have a copy. It's not the one
21 you gave yesterday, but I have a copy.

22 **THE WITNESS:** What page?

23 **BY MS. WHITE:**

24 **Q.** I want you to go to paragraph 34 of your complaint.

25 Do you have that?

1 **A.** Not yet. Okay.

2 **Q.** All right. So it states -- can you read paragraph --
3 well, maybe I'll read this. It will be a little bit faster.
4 And you can confirm if I read this correctly or not.

5 Paragraph 34 states, "As Officer Davies pulled up, Zane
6 was running away and his back was to Officer Davies."

7 Did I read that correctly?

8 **A.** Yes.

9 **Q.** Okay. And in paragraph 35, you allege, "Officer Davies
10 stopped his police vehicle, got out to pursue, then went back
11 to his car. Davies then fired four shots fired at Zane."

12 Did I read that correctly?

13 **A.** Yes.

14 **Q.** And in paragraph 60(b), you allege, "Officer Davies pulled
15 his car to a stop and shot Zane in the back, as he was running
16 away."

17 Did I read that correctly?

18 **A.** Yes.

19 **Q.** In paragraph 63 it alleges, "Davies drew his handgun and
20 fired four shots at Zane while Zane was running away from him."

21 Did I state that correctly?

22 **A.** Yes.

23 **Q.** And in paragraph 29, "The BB or airsoft gun was not in
24 Zane's hands, but was tucked away in his clothing."

25 Did I read that correctly?

1 **A.** Yes.

2 **Q.** In paragraph 30, you allege, "Zane did not have any
3 weapons in his hands as he ran."

4 Did I read that correctly?

5 **A.** What paragraph?

6 **Q.** Paragraph 30. "Zane did not have any weapons in his hands
7 as he ran."

8 Did I read that correctly?

9 **A.** Yes.

10 **Q.** And then paragraph 60(a), tell me when you're ready for me
11 to read that.

12 **A.** Ready.

13 **Q.** "Zane did not have a visible weapon."

14 **A.** Yes, it does say that.

15 **Q.** Okay. So what this list shows is all the things that
16 Ms. Bruce told you, that we just went through in your
17 testimony, and then what was alleged in the complaints. So as
18 you look at that list, all of the events Ms. Bruce told you the
19 hypothetical recording would show are included in your
20 complaint; correct?

21 **A.** They are. They're surprisingly consistent, which is what
22 has me concerned.

23 **Q.** Okay.

24 **MS. WHITE:** So, Your Honor, I'll move for the
25 admission of this PowerPoint list as demonstrative of

1 Ms. James's testimony.

2 **THE COURT:** As a demonstrative only? All right.

3 Mr. Sykes, do you object to that?

4 **MR. SYKES:** No objection.

5 **THE COURT:** All right. I'll allow that.

6 **BY MS. WHITE:**

7 **Q.** Now, let's turn now to paragraph 11 of your August 25th,
8 2020, affidavit. And Jennifer will put that on the screen so
9 you can see that.

10 **MR. SYKES:** I'm sorry, Heather, what are you looking
11 at here?

12 **MS. WHITE:** The August 25th, 2020, affidavit. We're
13 going to paragraph 11.

14 **THE WITNESS:** I can see it on the screen.

15 **MR. SYKES:** I'm sorry, what was the date on that
16 August again?

17 **MS. WHITE:** Twenty-fifth.

18 **MR. SYKES:** Twenty-fifth. Okay. Gotcha.

19 **MS. WHITE:** Jennifer, can you scroll down there for
20 us.

21 **BY MS. WHITE:**

22 **Q.** And then as you read through that, in paragraph 11, you
23 claim Ms. Bruce told you, on August 11th, 2020, that the
24 recording she saw "looked like first-person shooter video."

25 Correct?

1 **A.** Yes.

2 **Q.** Okay. And then other than details about what the houses
3 looked like, she really didn't provide any other details about
4 what the recording would show of Zane or Officer Davies, their
5 actions; correct?

6 **A.** No, the conversation was more detailed. She talked about
7 the neighborhood and she talked about looking like a first-
8 person shooter video.

9 **Q.** Right, but we just talked about the first person and we
10 talked about what houses it would show, but she didn't say
11 anything else about what the recording would show Officer
12 Davies doing or Zane doing in that conversation on August 11th;
13 correct?

14 **A.** She reiterated in that conversation the previous
15 conversation, yes.

16 **Q.** Okay. So no new details, other than the first-person
17 video?

18 **A.** The first statement to me, about first person, was my
19 question to her.

20 **Q.** I'm not asking you who said it, I'm just asking you the
21 detail that she gave you.

22 And she told you it looked like a first-person shooter
23 video; right?

24 **A.** Yes, she did.

25 **Q.** All right. Now I want you to go to paragraph 12. We'll

1 just scroll down there. And why don't you read that
2 highlighted portion for us.

3 **A.** Sure.

4 "She said the officer pulled up in his car, got out and
5 fired four times at Zane without warning as he ran away. I
6 asked her to confirm again that she did not see a gun in Zane's
7 hand, and she said there was no gun in his hand, he was
8 hobbling as he ran away, and that his hands were moving as he
9 was trying to run away injured."

10 **Q.** And that was in a conversation the next day, August 12,
11 2020, that you had with her; correct?

12 **A.** It is.

13 **Q.** Okay. So I want to again digest that. And I'm going to
14 just have you -- we'll just confirm that she told you there
15 that the officer pulled up and got out of his car in that
16 August 12th conversation. So do you have that -- do you have
17 that affidavit in front of you for paragraph 12? Because I'm
18 going to do another list.

19 **A.** No. Which one is it, the one we just looked at?

20 **Q.** August 25th, 2020, affidavit at paragraph 12.

21 **A.** Go ahead and start doing your list and I'll find it.

22 **Q.** Okay. So I'm just going to recap the details that she
23 provided you in that conversation, and that was, "The officer
24 pulled up and got out of his car."

25 That was one of them; right?

1 **MR. SYKES:** Let her find the hardcopy, if you could.

2 **MS. WHITE:** Okay. I'd prefer that, too.

3 **THE WITNESS:** This is August 25th. Yeah, I've got
4 the August 25th.

5 **BY MS. WHITE:**

6 **Q.** Now go to paragraph 12.

7 **A.** Okay. Thanks. It says, "Not Mistaken, No Warning & No
8 Gun"?

9 **Q.** Go down to where you just read, and the information that
10 she gave you was, "The officer pulled up and got out of his
11 car"; right?

12 **A.** Yes.

13 **Q.** And Zane was hobbling as he ran away from the officer?

14 **A.** Yes. A couple of sentences down, yes.

15 **Q.** Okay. And Zane was injured?

16 **A.** Yes.

17 **Q.** And Zane did not have a gun in his hand?

18 **A.** Yes. Above that, yes.

19 **Q.** Okay. And Zane's hands were moving as he was running
20 away?

21 **A.** Yep.

22 **Q.** The officer did not warn Zane as he was going to shoot?

23 **A.** Yes.

24 **Q.** And the officer shot four times at Zane?

25 **A.** Yes.

1 Q. Okay. So now I'm going to do the same thing that we did
2 before and have you turn back to the complaint. And I'm going
3 to read allegations in your complaint for you and ask you if I
4 read them correctly. Okay?

5 So go to paragraph 35 of your complaint and tell me when
6 you're there.

7 A. I'm here.

8 Q. Okay. Paragraph 35 says, "Officer Davies stopped his
9 police vehicle, got out to pursue, then went back to his car."

10 Did I read that correctly?

11 A. Yes.

12 Q. Okay. And paragraph 28 says, "Zane was limping seriously
13 as he tried to get away."

14 Did I read that correctly?

15 A. Yes.

16 Q. I'm sorry. Did I -- I didn't give you enough time to turn
17 to 28.

18 A. Yes.

19 Q. Okay. Now go to 60(f) and tell me when you're there.
20 That's a little bit down further.

21 A. I did not hear the number.

22 Q. 60(f), as in Frank. Are you there?

23 A. Yes.

24 Q. "Zane appeared to be injured and limping as he ran"?

25 A. Yes.

1 Q. Okay. Now go back to paragraph 29.

2 A. Yes.

3 Q. "The BB or airsoft gun was not in Zane's hands but was
4 tucked away in his clothing."

5 Is that right?

6 A. Yes.

7 Q. Okay. And now paragraph 30, "Zane did not have any
8 weapons in his hands as he ran."

9 Did I read that right?

10 A. It says, "It was obvious, or would have been obvious to
11 any reasonable officer, that Zane did not have a weapon, or
12 weapons, in his hand as he ran," yes.

13 Q. Okay. Great. Now, turn to paragraph 75.

14 MR. SYKES: Now, is this paragraph 75 of the
15 complaint?

16 MS. WHITE: Yeah, paragraph 75 of the complaint.

17 THE WITNESS: Yes.

18 BY MS. WHITE:

19 Q. "When Defendant Davies fired the shots, Zane had no weapon
20 in either hand"?

21 A. This is 72, "Before Davies fired the shots, Davies knew or
22 suspected that Zane had been seriously injured in the crashing
23 and skidding of the motorbike"?

24 Q. No. Seventy-five.

25 A. I'm searching.

1 Q. That's all right.

2 A. "When Defendant Davies fired the shots, Zane had no weapon
3 in either hand."

4 Q. Okay. And now go to paragraph 82.

5 A. Okay.

6 Q. "Zane was not reaching for anything, but was trying to run
7 after a serious injury from the motorbike crash"?

8 A. Yes, it says that.

9 Q. Now paragraph 60(c), so 6-0, C.

10 MR. SYKES: Your Honor?

11 THE COURT: Yes.

12 MR. SYKES: I would object at this point. I don't
13 see any point to this. You know, comparing a complaint --
14 that's not something that my client drafted, it's something
15 that we drafted based upon what we thought the evidence would
16 provide. I don't see any point to going through and
17 laboriously comparing complaint paragraphs to the -- you know,
18 to the declaration. So we're just wasting time, so I would --

19 THE COURT: Ms. White, I think your point -- let me
20 ask you and make sure I understand what you're trying to do. I
21 think you're trying to show that all of the details about the
22 shooting that were described by Ms. Bruce can be found in the
23 complaint. Is that what you're trying to establish?

24 MS. WHITE: That's correct. All these conversations
25 that she had with Ms. Bruce, where Ms. Bruce supposedly, and as

1 she testified today, witnessed this video that allegedly
2 exists, what it showed.

3 **THE COURT:** All right.

4 Mr. Sykes, are you willing to stipulate that the
5 details that describe -- the details listed in the Ms. James's
6 declaration of what she was told about the video by Ms. Bruce
7 can all be found in the complaint?

8 **MR. SYKES:** I don't know that as I sit here. All I
9 know is that when we drafted the complaint, we made good faith
10 assumptions based upon what we knew, you know. We had an
11 eyewitness to the actual shooting. I relied heavily on that
12 eyewitness.

13 Now, the eyewitness didn't see, you know, Zane get
14 hit by the police car, but the eyewitness saw the officer
15 crouch down and shoot. And that eyewitness told us that there
16 was no weapon in his hand, that he wasn't, you know,
17 aggressive. So we relied upon that.

18 Now, that was not drafted by Tiffany. Okay?

19 **THE COURT:** Of course. Of course.

20 But, Ms. White, how many more of these statements are
21 you going to walk through? Is this the last one or are there
22 more?

23 **MS. WHITE:** There are about five or six more,
24 Your Honor.

25 **THE COURT:** That's going to take a while.

1 But your point is that every detail that Ms. Bruce
2 says has a counterpart in the complaint; correct?

3 **MS. WHITE:** Yes. That's correct. And I can show the
4 Court the list for each of these with all of the
5 paragraph references as demonstrative of what Ms. James's
6 testimony would be.

7 **THE COURT:** Right. Now, I think Ms. James, based on
8 her declaration, my understanding is she probably won't dispute
9 that. In fact, she found what Ms. Bruce said concerning
10 precisely because it was consistent with what the eyewitnesses
11 said, whose testimony is -- whose statements are tracked in the
12 complaint.

13 Am I misunderstanding that, Mr. Sykes?

14 **MR. SYKES:** I think that's what she's getting at.
15 You know, I -- I think that, you know, that -- the point that
16 we believe here, Judge, I mean it's pretty obvious, we did not
17 have confirmation of any of the things that we had in the
18 complaint. We believed it in good faith to be true, but Tali
19 Bruce confirmed that there was indeed a shooting. And that --

20 **THE COURT:** Yeah, maybe we can just cut this short by
21 saying, you know -- maybe, Ms. White, you could just ask
22 Ms. James, is she aware of any details that Ms. Tali -- that
23 Ms. Bruce provided that are not in the complaint.

24 **MS. WHITE:** Yes. Let me do that.
25

1 **BY MS. WHITE:**

2 **Q.** So, Ms. James, are you aware of any details that were
3 provided by Ms. Bruce, when she saw this recording, that were
4 not included in your complaint?

5 **MR. SYKES:** Your Honor, I object to that question in
6 the sense that it calls for a speculative conclusion that she
7 may or may not know the answer to. You know, I don't know that
8 she -- she probably doesn't know that.

9 **MS. WHITE:** Then I think I --

10 **THE COURT:** Okay. She can -- I mean, Mr. Sykes, you
11 basically have the choice of letting her ask that question or
12 having her walk through each of these quotes.

13 **MR. SYKES:** Okay. Let her walk through them, I
14 guess. Sorry.

15 **THE COURT:** Okay.

16 **MR. SYKES:** I think it's a waste of time but, you
17 know -- I mean I don't -- I don't -- I don't object if
18 Ms. White wants to proffer what she thinks it would be, you
19 know.

20 **THE COURT:** Okay. I mean -- well, I mean I don't
21 know -- I think I might overrule your objection in any event.
22 I mean the witness may not know the answer, but I mean if the
23 question was phrased as is she aware of any details. So I'm
24 going to overrule that and let you ask that question and let
25 the witness answer it.

1 **MS. WHITE:** Okay.

2 **BY MS. WHITE:**

3 **Q.** So, Ms. James, are you aware of any details that Ms. Bruce
4 provided, that said were shown in the recording of the
5 shooting, that are not included in your complaint?

6 **MR. SYKES:** And I'll make the objection that it's
7 overly broad.

8 **THE COURT:** Overruled.

9 **MR. SYKES:** And there is no foundation. You're going
10 to overrule it, but I'll make the objection.

11 **THE COURT:** I've already overruled it. Yes.

12 **MR. SYKES:** Thank you.

13 **THE WITNESS:** Yes. The details were that it was a
14 first-person video of the shooting, when you could see an
15 officer get out of his car and shoot my son. And she had
16 details that were very specific and she used language and
17 phrases and recollections and feeling and emotion when she said
18 them that were very similar, if not identical, to what we heard
19 our witness, Heather Dodds, say on video, that Tali hasn't seen
20 because no one has seen it.

21 **MS. WHITE:** So, Your Honor, I think I need to go
22 through this then and continue going through the details that
23 she provided in her affidavit about what Ms. Bruce told her and
24 then what the allegations included in the complaint are.

25 **THE COURT:** [Inaudible].

1 **MS. WHITE:** I'm sorry, did you say "All right"?

2 **THE COURT:** I did.

3 **MS. WHITE:** Okay, sorry.

4 **BY MS. WHITE:**

5 **Q.** So let's go to 60(c). Are you at paragraph 60(c)?

6 And it said, "No effective warning or opportunity to stop
7 was given by either Officer Davies or Officer Betenson."

8 Did I read that right?

9 **A.** Yes.

10 **Q.** Okay. And go to paragraph 64. "Davies did not issue any
11 warning to Zane to 'stop or I'll shoot' before firing four
12 shots."

13 Did I read that right?

14 **A.** "Based on information and belief, Davies did not issue any
15 warning to Zane to 'stop or I'll shoot' before firing four
16 shots."

17 **Q.** So I read that right; correct? I'm sorry, I'm having a
18 hard time hearing you now.

19 **A.** Yeah. I said you did. You did.

20 **Q.** Okay. Now --

21 **THE WITNESS:** Can I ask a question to you?

22 **MR. SYKES:** To me? No, not during the examination.

23 **THE WITNESS:** Okay.

24 **MR. SYKES:** But you can ask her.

25 **THE WITNESS:** Can I ask you a question, Heather?

1 **MS. WHITE:** No.

2 **THE WITNESS:** Okay.

3 **BY MS. WHITE:**

4 **Q.** Now go to paragraph 35.

5 **A.** Okay.

6 **Q.** It states, "Davies then fired four shots fired at Zane."

7 Did I read that right?

8 **A.** Paragraph again?

9 **Q.** Paragraph 35.

10 **A.** Yes. It does say that.

11 **Q.** All right. And then go back to paragraph 63, please.

12 **A.** Okay.

13 **Q.** "Davies drew his handgun and fired four shots at Zane
14 while Zane was running away from him."

15 **A.** Yes.

16 **Q.** Okay. So you see the list of all the things that Tali
17 told you would be shown in the recording corresponded up with
18 the allegations in your complaint. Do you see that on the
19 screen?

20 **A.** I do.

21 **MS. WHITE:** Okay. Your Honor, I would move for the
22 admission of this second list, this demonstrative, of
23 Ms. James's testimony as well.

24 **THE COURT:** Mr. Sykes, objection to admitting this
25 only as a demonstrative?

1 **MR. SYKES:** You know, I -- are these
2 paragraph numbers from the complaint, is that what they are?

3 **MS. WHITE:** Yes.

4 **MR. SYKES:** Okay. And you're saying these summarize
5 what the complaint says?

6 **MS. WHITE:** Those -- the items on the screen on the
7 list, "The officer pulled up and got out of his car, Zane was
8 'hobbling,'" those are, when we went through the affidavit,
9 what Tali told -- what Ms. Bruce told Ms. James. And
10 then [inaudible due to audio interference] those up with
11 paragraphs where the allegations are made in the complaint.

12 **MR. SYKES:** I don't have any objection to this as
13 demonstrative of what Ms. White is claiming here for this
14 examination. I don't know that they're all accurate -- I don't
15 have the stuff in front of me. I gave it to my client, but I
16 don't have a problem -- if she says this is demonstrative, I'll
17 take her word for it.

18 **THE COURT:** Yeah, I mean it's -- obviously, it stands
19 for a demonstrative of what Ms. White is trying to establish.
20 I mean the paragraphs say what they say and they either match,
21 you know, those statements or they don't. And those statements
22 either track what Ms. Bruce said or they don't.

23 So I mean this isn't going to establish the truth of
24 any of those underlying -- you know, we're not taking this as
25 necessarily an accurate summary or accurate conclusions. We're

1 taking this as a demonstrative, walking through Ms. White's
2 argument. That's my understanding. And on that understanding,
3 I'll admit it.

4 **MR. SYKES:** Now, another thing, Judge, by way of an
5 objection here, I don't see how this goes to the existence of a
6 video. You know, I just don't -- I don't get it. And maybe
7 I'm just a simple country lawyer here, but I don't get that and
8 I just think it's wasting time. So I object to anymore
9 examination along this line.

10 **MS. WHITE:** Your Honor, it relates to some of the
11 other issues that the Court has asked us to talk about, and
12 that is whether there was spoliation, what it might show, was
13 it done in bad faith, and all of those other issues. So it's
14 critical to those issues that the Court has to determine on
15 Mr. Sykes's motion. It's Mr. Sykes who has asked for those
16 sanctions, and what we're doing is providing the Court with the
17 evidence that relates to those -- our defenses that relate to
18 those.

19 **MR. SYKES:** Let me respond to that briefly, Judge, if
20 I could. I didn't mean to interrupt you.

21 **THE COURT:** No, that's fine. Go ahead.

22 **MR. SYKES:** Yeah.

23 In your minute entry, which I've got -- my client
24 has, you made it very clear that we weren't going to talk about
25 spoliation. Okay? The issue was -- and I've got your summary

1 here, Eric, somewhere. The issue was whether or not there was
2 sufficient -- whether there was a reasonable likelihood -- I'm
3 paraphrasing, Judge, but I think it's pages 20 and 21 of the
4 minute entry or the transcript, whether there is a reasonable
5 likelihood. You said -- this is a direct quote.

6 "If you persuade me, Mr. Sykes, based on that
7 hearing, that there's a reasonable likelihood, you know, that
8 the tapes probably do exist, I have to figure out what we're
9 going to do about that." Okay?

10 Then you say, "On the other hand, if Ms. White
11 persuades me that, you know, Tali Bruce is mistaken and
12 Christine Mikell is correct, that there is a different video or
13 something like that, then, you know, maybe we can move
14 forward."

15 And so you talked about a reasonable likelihood, a
16 basis in the evidence, a basis to inquire further, those are
17 your words from the hearing. And so I took that at face value
18 and we have addressed it like that.

19 Now, I know that my original motion talked about
20 spoliation. Okay? But I don't read you as saying we're going
21 to discuss that here. So if this is all about spoliation, I
22 don't think we have to discuss it. The issue is whether I get
23 more discovery before you rule on any motion, and the standard
24 you gave us was reasonable likelihood, okay, or a basis to
25 inquire further.

1 And so I think that's where we are and I don't see
2 how any of this helps us with that.

3 **THE COURT:** All right. Thank you.

4 I think -- it seems to me that this is cumulative at
5 this point. And that given the nature of how this is
6 proceeding and how it proceeded for these first two statements,
7 this could simply be addressed through briefing, if you want to
8 just line up the statements, you know, one by one, you know,
9 line up the Bruce statements and line up the allegations of the
10 complaint. It seems like you could just do that in writing
11 without -- I don't know that walking -- you know, doing this
12 through the witness is really accomplishing anything
13 significant.

14 **MS. WHITE:** Sure. I'm more than happy to do that.

15 **THE COURT:** Why don't we do that, and then you can
16 explain why you think that's relevant. And my understanding is
17 that what you were getting at is the idea that, you know,
18 Ms. Bruce could have, you know, perhaps misremembered the video
19 or something. That's what I understood you were getting at
20 but...

21 **MS. WHITE:** Right.

22 **THE COURT:** Why don't you just do that in writing. I
23 think Mr. Sykes's point is well-taken, that this probably isn't
24 particularly useful to just kind of read through paragraph by
25 paragraph. I don't think there's any real disputes about what

1 the declaration says or what the complaint says. I mean we can
2 just look at those on paper.

3 **THE WITNESS:** Can I say there's one more thing that
4 Tali says that's not in our motion?

5 **THE COURT:** If Ms. White asks you or if Mr. -- I'm
6 pretty confident your attorney will ask that on redirect, so
7 just hold that thought. I'm confident you'll have the chance
8 to say that, but right now, it's Ms. White's turn.

9 **MS. WHITE:** Your Honor, we just need to confirm that
10 there won't be anything additional added from this point on
11 that Ms. James could submit. Her testimony is already in and
12 there can be no new additions to that subsequently.

13 **THE COURT:** Well, you had the chance to ask her, I
14 let you over Mr. Sykes's objection. She mentioned the fact
15 that it was a first-person video. And I think it sounds like
16 she has some other ideas that perhaps you could ask or Mr. --
17 you know, Mr. Sykes could ask about and, you know, at that
18 point, I think the record will be closed.

19 **MS. WHITE:** All right. So I just have a few other
20 questions that then go to conversations she claims to have had
21 with Ms. Bruce and Ms. Mikell.

22 **BY MS. WHITE:**

23 **Q.** In your November 6th, 2020, affidavit, Ms. James, you
24 testified that you corresponded with council members Bruce and
25 Mikell numerous times between June 8th, 2020, and August 4th,

1 2020, through e-mail and text message.

2 Do you recall that?

3 **A.** Yes.

4 **Q.** Do you have copies of those texts and e-mails?

5 **A.** I do.

6 **Q.** And what e-mail accounts did you send your e-mails from?

7 **A.** For mine? I sent them from my e-mail accounts, cardinal,
8 I think. I have a number of them.

9 **Q.** To what e-mail addresses did you send e-mails to
10 Ms. Bruce?

11 **A.** My --

12 **MR. SYKES:** Your Honor, I object. This is ordinary
13 discovery. That can take place -- I'm hoping you'll rule in
14 our favor, and the time to get into this type of stuff is
15 during discovery. We're talking about is there a video, video
16 number two or not, that's the question you asked us to address.

17 **THE COURT:** All right. Ms. White, do you want to
18 explain the relevance?

19 **MS. WHITE:** Yes. I mean she's claimed that she's had
20 all these conversations about it and I think we're entitled to
21 know what those conversations entailed, whether they could
22 relate to the existence of a video, what their testimonies are,
23 and we are entitled to know if any of those referenced video
24 recordings.

25 **THE COURT:** Well, you could probably ask that.

1 That's different from what the e-mail account was sent to and
2 so forth.

3 **BY MS. WHITE:**

4 **Q.** Do any of those e-mails to Ms. Bruce relate to the
5 potential existence of a recording of the actual shooting?

6 **A.** After August 2nd, or actually after August 4th, when
7 Christine -- I may have e-mails that relate to that with Tali.

8 **Q.** And do you recall what the dates of those e-mails were?

9 **A.** I've given the dates of the conversations I had with Tali
10 specifically about the video. Those are --

11 **Q.** You provided those in your affidavits?

12 **A.** Yes. Those are my principal conversations with --

13 **Q.** Okay. And so that's where you got the information that
14 you included in your declarations?

15 **A.** Yes. My previous conversations that you referenced, that
16 I had with them between June 8th, when I first e-mailed Tali to
17 ask if she would help us with police reform, putting police
18 reform policy suggestions before the council, and August 2nd.
19 Those e-mails between Tali and I, as well as those e-mails and
20 texts between Christine and I, were all about police reform.

21 **Q.** Okay. And then after August 4th, they became about
22 this --

23 **A.** Not necessarily. Yeah, not necessarily.

24 **Q.** Did some of them?

25 **A.** I think I mostly corresponded with Tali Bruce in

1 conversation we're happy to provide.

2 Q. Okay. In your affidavits, you have several quotations
3 from Ms. Bruce and Ms. Mikell. How did you obtain those quotes
4 as opposed to what the -- just what the substance of the
5 statement was?

6 A. Where I wasn't -- where I had just the substance of the
7 conversation, I didn't put a quote around it. The very
8 specific statements about the shooting in the video are my
9 recollection of what I heard them say and that's why I quoted
10 it.

11 Q. Okay. So you don't have them in writing somewhere that
12 shows that that's the actual quote they made?

13 A. I have notes.

14 Q. But you don't have it in -- a statement from them in
15 written form?

16 A. I do not have a statement from them in written form.

17 Q. Okay. And do you have any recordings that establish those
18 quotations are what they actually said and the words they
19 actually used?

20 A. No. Christine asked me specifically not to record her,
21 which I told her I wouldn't do that anyway. So I don't have a
22 recording of Christine. I know I recorded Tali.

23 Q. So those quotations are your best recollection of what
24 they said, is that what I understand?

25 A. No. Those two statements that Christine made, and my

1 statement in response to her, as well as the statement that
2 Tali has, they were pretty crystal clear in my mind and that's
3 why I put quotes around them.

4 **Q.** And that's based on your recollection?

5 **A.** That's based on my unequivocal belief that is exactly what
6 they said to me.

7 **Q.** Okay. Did you memorialize those statements in the exact
8 quotations in writing when they were made to you?

9 **A.** I did after.

10 **Q.** Okay. And then why didn't you use the words "actual" in
11 your August 25th declaration and the May 3rd and November 6th
12 and 9th affidavits, when you had the August 25th in quotes?

13 **MR. SYKES:** Your Honor, I object. This is
14 repetitive, cumulative, and it doesn't get us to the point of
15 whether there's a video or not. So I object.

16 **THE COURT:** I'll let you get an answer to that
17 question. Go ahead, but I think it's close to asked and
18 answered. It's not quite asked and answered. So I'll let you
19 try one more time to get an answer to that, but you've
20 certainly discussed that before.

21 **BY MS. WHITE:**

22 **Q.** Could you answer that question, please, Ms. James?

23 **A.** Yes.

24 Between the two, I went back to my notes, as I said
25 earlier, and I wanted to make sure I was precise in what I put

1 in my declaration.

2 Q. And just to be clear, you have never seen a recording of
3 Zane being shot; correct?

4 A. No, I haven't.

5 MS. WHITE: Okay. I don't have any further
6 questions. Thank you.

7 THE COURT: Thank you.

8 Mr. Sykes, you can do some redirect. And I think
9 your client had something she wanted to say, so you might want
10 to elicit that as well.

11 MR. SYKES: Thank you, Judge.

12 REDIRECT EXAMINATION

13 BY MR. SYKES:

14 Q. I think -- well, what is it you want to say in response?
15 I'm sorry.

16 MS. WHITE: Your Honor, I'm a little confused with
17 that. I think that is not exactly the way that questions are
18 supposed to be asked under the --

19 MR. SYKES: I'll rephrase. I think Ms. White has a
20 good point here.

21 I was trying to be a little bit humorous at the late
22 hour. Okay?

23 THE COURT: Be more precise.

24 BY MR. SYKES:

25 Q. Is there anything else that Tali Bruce said that's not in

1 the complaint?

2 **A.** Yes.

3 **Q.** What is it?

4 **A.** It is the fact that there was no one else -- there were no
5 other officers on the scene when the shooting occurred, which
6 was the same that Heather Dodd said.

7 So Betenson says he was on scene, and that's what we read
8 in the evidence, in the GRAMA records, but when we talked with
9 Heather Dodd, who is the witness that was not included in the
10 GRAMA records, her statements, she said that Officer Betenson,
11 or the second officer, arrived on scene after the shooting
12 occurred. And Tali Bruce also confirmed that after Zane was
13 shot and laying on the ground is when the other officer showed
14 up.

15 **MR. SYKES:** No further questions. Thank you.

16 **THE COURT:** All right. Thank you. Anything -- any
17 final words for this witness, any final questions, Ms. White?

18 **MS. WHITE:** No, Your Honor.

19 **THE COURT:** All right. Well, thank you, Ms. James,
20 for your testimony. We appreciate it. And I think you're
21 excused.

22 **THE WITNESS:** Thank you. You're welcome.

23 **THE COURT:** All right. Now, I think that concludes
24 the witnesses, does it not? Was there anyone else we need to
25 discuss?

1 **MS. WHITE:** No, Your Honor. That concludes everyone
2 from defense's point.

3 **THE COURT:** All right. Now I'd intended to talk
4 about kind of logistics and where we go from here. It's gotten
5 quite late, though, so I think -- I've requested some briefing
6 as we've gone along. And I suggested just now, Ms. White, that
7 you make the argument on paper that you were making, walking
8 the witness through, you know, where you identify -- basically
9 lining up statements that Ms. James testified that Ms. Bruce
10 made to her with things in the complaint.

11 And I don't know how you'd like to -- how much time
12 do you think you'd need to do that, to just prepare that? You
13 could do it as a brief or you could even just submit it as a
14 table, as far as I'm concerned, if you wanted to do that.

15 **MS. WHITE:** Probably -- with the Thanksgiving
16 holiday, probably a couple of weeks, just --

17 **THE COURT:** Okay. Why don't we say a couple of
18 weeks, then. Let's do two weeks from today.

19 And then, Mr. Sykes, if you want about a week
20 after -- so that would be December 2nd. And, Mr. Sykes, if you
21 want another week to just point out any disagreements or any
22 inconsistencies or things of that sort, you're welcome to do
23 that.

24 **MR. SYKES:** I'm sure I would never disagree with my
25 friend Heather White. I couldn't imagine I would do that.

1 Maybe. You never know.

2 **THE COURT:** Well, the other thing I wanted to ask is,
3 it seems to me that -- you know, this has been an interesting
4 evidentiary hearing. It seems like both of you have raised,
5 you know, credibility issues about Ms. Bruce on Ms. White's
6 side and Officer Davies on Mr. Sykes's side, involved in prior
7 statements and so forth, that ended up getting into some pretty
8 complicated separate legal issues, with Ms. White's pending
9 litigation and with the Garrity interview from Mr. Davies. So
10 that was a little bit tricky.

11 And in a way, both of those things are quite
12 tangential because they were essentially both attempts to
13 discuss credibility, but I guess it seems to me that both sides
14 have suggested that this system software that's used for the
15 body camera is pretty foolproof. And it seems like it ought to
16 be possible just to look at the data and tell whether the video
17 was made. And if it was made, if it was deleted or what
18 happened to it.

19 Am I misunderstanding that, Mr. Sykes?

20 **MR. SYKES:** No. I think -- you know, we -- our
21 expert is Chief Chris Burbank, who was police chief in Salt
22 Lake for about eight or ten years, until he was wrongfully
23 terminated I might add, but I would think that that could
24 easily -- if you want to let us do limited discovery, that
25 should be high on the list. Okay?

1 Obviously, you know, I'd like to depose the officer
2 but, you know, if -- what I'm told -- now, see, I will say this
3 about Chief Burbank, and I don't know if it came across in his
4 affidavit. He said some departments don't use the databank
5 that Axon provides, some do not use it.

6 I got the impression that Cottonwood Heights did use
7 it. If Cottonwood Heights did use it, there will be a digital
8 footprint, an audit trail. Like they say in medical
9 malpractice cases, there will be an audit trail. If they
10 didn't use it, there may not be an audit trail, but we could do
11 a lot of discovery on that, Your Honor, probably pretty
12 quickly.

13 As you notice, I don't ask a lot of long questions
14 here so I think we could come to a realization of that. There
15 may be an audit trail, there may not be, you know. In which
16 case, you're going to have to make a decision on whether you
17 want to go for more discovery.

18 But I'd like to depose Officer Davies, obviously, on
19 the things we've talked about. I'm going to write you a brief
20 about that, you know, about the Garrity interviews, but that's
21 for another day, but that's what I want.

22 In other words, I want you to deny this motion to
23 dismiss without prejudice. She could raise it again in a
24 motion for summary judgment. I think there's enough evidence
25 here that there is a video. You've got a person testifying

1 believably that she saw it, okay?

2 And it's not -- as you know, it's not the number of
3 witnesses in litigation, it's their credibility. She's very
4 credible.

5 **MS. WHITE:** Your Honor, we're getting into argument
6 now.

7 **THE COURT:** I wanted to just stay focused on the
8 question I was asking. So I understand your position,
9 Mr. Sykes, I believe, on the merits of it.

10 Ms. White, do you have any insight? I mean is
11 this -- does Cottonwood Heights use the software system and is
12 it essentially foolproof?

13 **MS. WHITE:** Your Honor, I was actually thinking about
14 this yesterday and today and thinking how simple it would be.
15 Yes, it does use the evidence.com, which has that footprint.
16 In fact, we included that information in the declaration of
17 Candace Terry. And that's why we're not cross-examining Chris
18 Burbank either, is he looked at that data, too, and it shows
19 that there is nothing there that has been deleted.

20 And, you know, the plaintiffs have had an opportunity
21 to look at that and provide it to an expert and did nothing
22 with respect to that.

23 **MR. SYKES:** That's inaccurate. That's inaccurate.

24 **MS. WHITE:** It shows --

25 **THE COURT:** Let her finish. I'll give you a chance

1 to respond.

2 **MS. WHITE:** The logs were provided with Ms. Terry's
3 declaration. And what they show is that the last recording
4 that was on Officer Davies's camera was made the day before the
5 shooting, on May 28th, ending at 3:12 p.m., and the next
6 recording made was not until June 30th, 2018, at 7:56 a.m.,
7 which was more than a month later. That evidence is attached
8 to Ms. Terry's declaration. And it conclusively establishes
9 there is no body camera recording for Officer Davies.

10 **THE COURT:** All right.

11 **MR. SYKES:** Your Honor --

12 **THE COURT:** You may respond, Mr. Sykes.

13 **MR. SYKES:** We disagree with that. The data was not
14 provided. We need to get an expert to look at it to get to the
15 bottom of it. So we disagree with that.

16 And Chief Burbank, I think, told us, too, that there
17 needs to be more done. We need to see the original data, not
18 somebody's, what do you call them, spreadsheet of it, you know.

19 **MS. WHITE:** We have a suggestion perhaps that if the
20 Court wanted to appoint an independent expert to take the data
21 from the camera and extract that and look and see what it
22 shows, then the Court would have its answer. It wouldn't be
23 from a defense perspective or the plaintiffs' perspective.
24 That is the proof.

25 **THE COURT:** Do I have the authority to appoint an

1 independent expert for this?

2 **MS. WHITE:** We certainly would stipulate to it.

3 **THE COURT:** Mr. Sykes, do I, do you think?

4 **MR. SYKES:** I don't think so, Judge. I think we have
5 a right to prove our case. I'd like to get somebody that I can
6 rely on. And not that -- that you wouldn't do it fairly, I'm
7 sure you would, you know, but I think we need to get someone in
8 there that can look at this data and tell us what's going on.
9 Now, I don't know that Chris Burbank is the guy. I mean I
10 think there's got to be a specialist that can do that. He can
11 tell us who can do it, but I want to get my own expert to look
12 at it at some point.

13 Now, that's discovery. We're asking for discovery,
14 but, you know, I want our person to look at it so I can talk to
15 him, talk him through it and find out what's going on. I don't
16 necessarily trust an "independent expert."

17 **THE COURT:** Let's take that in pieces.

18 If there were an independent expert, who would pay
19 for it?

20 **MS. WHITE:** I think the parties would jointly pay for
21 it. And I'm informed by the chief that Axon, the maker of the
22 camera and that does the software, they have people that do
23 this. And the problem with what Mr. Sykes is asking for is
24 it's getting into discovery. And what we're just trying to
25 establish here, Your Honor, is, number one, is there a

1 recording? And if there isn't, then the Court is back to the
2 motion to dismiss and whether that should be granted or not.

3 **THE COURT:** I understand.

4 **MR. SYKES:** Judge, let me just say I could wax
5 philosophical for a minute, that's why so many courts have
6 commented on, you know, how difficult it is to rule on a motion
7 to dismiss before discovery's been done. We need discovery
8 here to get to the bottom of this very difficult issue. And,
9 you know, I know that's not necessarily why we're having this
10 evidentiary hearing, but you can see the breadth of issues that
11 are important here, you know. I mean so, you know, I think you
12 deny the motion to dismiss and let's go get discovery.

13 **THE COURT:** And that's your position, Mr. Sykes.

14 **MR. SYKES:** Yeah.

15 **THE COURT:** Do you have any -- I mean if the Court
16 were to appoint an expert, would it be possible to, you know,
17 provide a procedure where the parties both had to agree to the
18 expert and then the parties agree to split the cost of the
19 analysis, and then we could see what they did and decide
20 whether there's any reasonable ground for dispute? Does that
21 sound --

22 **MR. SYKES:** Well, I object to that, but if you impose
23 that, we will work in good faith with Ms. White to try to find
24 somebody, you know. But I can tell you this, having litigated
25 cases for 44 years, it's not often we can agree on that kind of

1 a person, you know. It's possible, but I don't think it's
2 likely. I think you'd probably end up having to make a
3 decision on who to appoint, both of us arguing for our -- you
4 know, our particular person.

5 **THE COURT:** Right. What about Ms. White's
6 suggestion, though, about somebody from the company itself?

7 **MR. SYKES:** I think that would be helpful, I do. You
8 know, but the problem is, I don't know -- you know, personally,
9 I have never encountered this issue before in my career, you
10 know. And I don't know enough to know what to ask that person
11 or what to say.

12 Now, you know, I would want to be certain that the
13 person is going to tell us fairly what happened. Cottonwood
14 Heights is apparently a client of Axon, which is owned by
15 Taser, you know. And, you know, that's one of the reasons why
16 I want to get our own expert, because, you know -- I mean my
17 clients, I'm sure, being nonlawyers, would wonder if we went to
18 Axon, if they're giving us, you know, an answer that their
19 client wants us to hear, and I'm concerned about that.

20 **THE COURT:** All right. So that's -- I understand.

21 Ms. White, what -- is your client -- I mean --

22 First of all, Mr. Sykes, if you had the expert of
23 your choice, would it be the -- it's getting late enough -- the
24 former Salt Lake police chief whose declaration you submitted,
25 is he the one you'd want to look at the data?

1 **MR. SYKES:** I don't think so, because he knows a lot
2 about it. He's expert enough to comment on what the data --
3 what data is available generally, but whether or not he's
4 competent to look at the details of it, I'll have to ask him.
5 I doubt it. I mean he was the general, you know. He didn't go
6 out and do intelligence work himself, you know. So I doubt,
7 but I don't know for sure. I doubt he'd be the one that would
8 be the expert we choose, but I'm certain he would know someone
9 that would know.

10 **THE COURT:** All right.

11 Ms. White, would your client have a problem, would
12 they object, would you object, to providing in some kind of an
13 electronic format the relevant data to an expert of defendants
14 just to analyze --

15 **MR. SYKES:** Plaintiffs, plaintiffs.

16 **THE COURT:** Plaintiffs, excuse me, yes.

17 **MS. WHITE:** I mean we'd have to assess that. To me,
18 I just -- I don't understand Mr. Sykes's reticence in having an
19 independent person take a look at it and tell us -- someone
20 from the company -- and tell us whether it's been recorded and
21 deleted or ever existed or whatever. I just keep hearing over
22 and over, "I want to do discovery. I want to depose Officer
23 Davies. I want to do all these things," and we are on a motion
24 to dismiss.

25 **THE COURT:** Yeah. Just to be clear, none of that's

1 on the table right now. The only thing that's potentially on
2 the table right now, until I decide what to make of the
3 testimony I've heard today, is doing more with this data.
4 Because it does seem to me that if the data is as represented,
5 it ought to be able to provide a definitive answer one way or
6 the other. And that seems to me like the cleanest, easiest way
7 to just figure this out, with the minimum of additional
8 inquiry.

9 **MS. WHITE:** Yeah. The natural people that would do
10 that, to me, would be the people that build the software and do
11 that. I mean their reputation is on the line across the
12 country. I mean they don't have any basis for, you know, doing
13 some kind of a favor for Cottonwood Heights, one tiny city
14 within multiple jurisdictions throughout the United States.
15 There's no interest in being biased for anyone.

16 And they're the ones that write the software, they're
17 the ones that know how it works, they're the ones who know how
18 the cameras work. To me, it just makes the most sense for them
19 to do it.

20 **THE COURT:** Okay. It sounds like -- why don't you
21 and Mr. Sykes talk about it and see if you can come up with a
22 proposal. We're not going -- okay, for court purposes, we're
23 not going to be deposing Officer Davies. We're not going to be
24 doing discovery. We're not going to be doing document
25 requests. What we might be doing is some way of getting an

1 analysis of this data.

2 And I don't know whether the best way to do it is
3 something like what Ms. White proposes, of having an
4 independent expert, or whether it's having each of you have
5 your own expert and both have the data and look at it. But I
6 think -- I'd like the two of you to consult about that and see
7 if you can come up with any common ground at all on that. Is
8 that something you two could talk about?

9 **MS. WHITE:** Certainly. I mean just one proposal
10 might be what if we had someone from the company do it and if
11 either side disagreed with what the conclusion were, then they
12 could -- you know, both sides could get their own expert to try
13 to point out what the problems with that analysis was.

14 **THE COURT:** Mr. Sykes, any thoughts about that?

15 **MR. SYKES:** Well, for all the reasons I've already
16 said, I'm very nervous about that because, you know, it would
17 be like me calling as an expert, you know, an economist who
18 does a lot of our cases for us, you know. Maybe involve this
19 and say, well, he's independent. I mean Cottonwood Heights
20 would be asking, you know -- I mean they're a customer and
21 probably a well-paying customer. So, yeah, I'm nervous about
22 that. I am. I don't want to do that.

23 **THE COURT:** Right. I mean I suspect that they're a
24 very minor customer, but -- in the overall scheme of things.

25 **MR. SYKES:** Yeah. It's hard to know.

1 **MS. WHITE:** I think you can see with this proposal
2 I've even made, that we have someone from them. And if they
3 disagree with it, they can get their own expert. We're not
4 going to be able to come to any kind of an agreement and the
5 Court is just going to have to make a decision as to what to
6 do.

7 **THE COURT:** Sounds like it.

8 Ms. White, why don't you talk to your client and let
9 me know whether you have objections to letting -- you know,
10 possibly subject to a protective order, if there's a need for
11 that, I don't know, letting an expert of the plaintiffs to have
12 access to the data to analyze it.

13 **MS. WHITE:** I do have a problem with that, I can tell
14 you. I just -- without even knowing who that person might be,
15 I can't agree to that.

16 **THE COURT:** All right. Well, I'm going to put it on
17 the two of you to try and see if there's any kind of framework
18 that you can negotiate. And if there isn't, you know, maybe
19 you can kind of specifically both kind of figure out what
20 position you can live with, and I'd like you to get back to me
21 on that.

22 **MS. WHITE:** Thank you, Your Honor.

23 **MR. SYKES:** By what date, Judge?

24 **THE COURT:** How long do you think would be helpful?
25 I don't know how -- I mean it's -- obviously, if you both

1 approach it that you're not going to budge an inch, you could
2 probably get me something tomorrow, but I would like to at
3 least have you engage in a good faith discussion, realizing
4 that this really ought to be able to resolve this issue.

5 This is one of those cases that -- this is one of
6 those discrete issues that we really ought to be able to figure
7 out a solution to. It doesn't seem like it should be that
8 insurmountable of a problem.

9 **MS. WHITE:** Perhaps if Mr. Sykes could propose the
10 name of someone to us within seven days, we could take a look
11 at that and see if that's something that we might agree to or
12 not.

13 **THE COURT:** Why don't we do that. Mr. Sykes, why
14 don't you come up with a list of names that you would like and
15 see if any of them are acceptable to the defendants.

16 **MR. SYKES:** All right.

17 **THE COURT:** And the idea would be if we can find an
18 expert that they're willing to provide the data to, they will
19 do that and that expert can provide some analysis.

20 And, you know, I have read the data, Ms. White, and
21 honestly, I -- I mean I can't completely make heads or tails of
22 it, honestly. I see what your point -- I see where it says
23 that, you know, the recordings were made on certain dates and I
24 see where it says that they're deleted on certain dates, but
25 it's not something that I was able to just understand clearly

1 on the face of it. But I'm not surprised it's driving my
2 questions here.

3 **MS. WHITE:** I think that's fair, Your Honor, to have
4 an expert who can delve more deeply into the metadata and all
5 of that to provide that information to the Court.

6 **THE COURT:** All right. So let's -- why don't you --
7 Mr. Sykes, within seven days, why don't you give Ms. White a
8 list of names and see if there's someone that -- I mean I guess
9 we could potentially -- if it's somebody that Ms. White could
10 accept, perhaps that could even be like an independent expert
11 and we could have them mutually hired or -- perhaps both
12 parties will need their own expert, I don't know. But in any
13 event, it sounds like there's at least a possibility that you
14 might be able to identify some experts she'd be willing to turn
15 the data over to; right?

16 **MR. SYKES:** Well, the only thing we've ever been able
17 to agree on is what a wonderful man her father is, but that's
18 about it.

19 **THE COURT:** That's a start, Mr. Sykes.

20 **MR. SYKES:** It's a start, and her mother.

21 **MS. WHITE:** And Bob's daughter, I think we both agree
22 is an exceptional woman, so there you go.

23 **THE COURT:** We have some common ground already. All
24 right. Well, I think we've gone on long enough. I think what
25 I would like to do is before I try and resolve some of the very

1 difficult issues of credibility and even admissibility,
2 candidly, given some of the collateral legal implications of
3 some of the evidence, I would at least like to explore whether
4 there's a way we can resolve this dispute through the data. So
5 let's proceed along the lines we discussed.

6 But apart from that, is there anything else we need
7 to discuss at this time?

8 **MS. WHITE:** I'm wondering if it makes sense just to
9 push back all these other deadlines, these briefing deadlines
10 that we have on the admissibility and credibility issues, in
11 light of the expert, or if you want us to go ahead and still do
12 that.

13 **THE COURT:** We could do that. Any concern about
14 that, Mr. Sykes, with my saying, we'll try and get this expert
15 thing resolved before we worry about the other things?

16 **MR. SYKES:** Sure. You know, and your clerk is very
17 good about doing a minute entry that kind of tells us where to
18 go. Maybe it's the -- Ms. Peart, maybe Mr. Zhang, but you
19 know, I think if you could put a minute entry together, Judge,
20 and tell us what to do and when to do it, that would be very
21 helpful.

22 **THE COURT:** I think that is, too, and I'll make
23 clear -- if it overrides any of the dates I've set during the
24 hearing, I'll make clear in the minute order, and I'll make
25 clear now, that whatever the minute order says for the dates,

1 that will control anything that I said for dates here.

2 But I think, Ms. White, that suggestion is
3 well-taken, that it may make sense to hold off on some of that
4 briefing until we see if we can figure this out, if there's a
5 pathway to figure this out through the metadata and the data.

6 All right. Anything else that we need to discuss at
7 this rather late hour, Mr. Sykes?

8 **MR. SYKES:** It's been a good full day of trial. I
9 mean it's been more than a full day in federal court. So thank
10 you for setting this up. I mean we could have waited another
11 year, you know, to get an in-person hearing, but I think that
12 these Zoom things work fairly well. You know, I'm pretty happy
13 with them. And, you know, maybe we couldn't do a jury trial, I
14 don't know, but thanks for setting this up. You did a lot of
15 work to get this set up. Thank you for that.

16 **THE COURT:** All right. Thank you, Mr. Sykes.

17 **MR. SYKES:** Thank you for cooperating.

18 **THE COURT:** Ms. White, any other business from
19 Cottonwood Heights or Officer Davies?

20 **MS. WHITE:** No. Thank you, Your Honor.

21 And thank you, Bob.

22 **THE COURT:** All right. Thank you all. With that,
23 court will be adjourned.

24 **MR. SYKES:** Thank you.

25 (Concluded at 6:45 p.m.)

1 CERTIFICATE OF COURT REPORTER

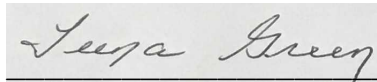
2
3 This is to certify that the proceedings in the
4 foregoing matter were reported by me in stenotype and
5 thereafter transcribed into written form;

6 That said proceedings were taken at the time and
7 place herein named via Zoom;

8 That the utmost care was taken in the preservation of
9 and accurate transcription thereof, understanding the myriad of
10 different factors that could potentially disrupt the audio feed
11 during Zoom proceedings;

12 I further certify that I am not of kin or otherwise
13 associated with any of the parties of said cause of action and
14 that I am not interested in the event thereof.

15 In witness whereof I have subscribed my name this
16 18th day of November 2020.

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19 Teena Green, RPR, CSR, CRR, CBC
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